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THE LIVES
OF
THE CHIEF JUSTICES
OF
ENGLAND.



FROM THE NORMAN CONQUEST TILL THE DEATH
OF LORD TENTERDEN.

By JOHN LORD CAMPBELL, LL.D., F.R.S.E.,

AUTHOR OF

'THE LIVES OF THE LORD CHANCELLORS OF ENGLAND.'

THIRD EDITION.

IN FOUR VOLUMES.--Vol. IV.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.
1874.

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1874
vol. 4

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LONDON: PRINTED BY WILLIAM CLOWES AND SONS, STAMFORD STREET
AND CHANCING CROSS.

CONTENTS OF THE FOURTH VOLUME.

CHAPTER XL.

CONCLUSION OF THE LIFE OF LORD MANSFIELD.

Lord Mansfield in retirement, 1. His opinion upon the introduction of jury trial in civil cases in Scotland, 3. Recollections of Lord Mansfield by his grand nephews, 5. His amusements, 5. His care of his fortune, 6. He abstains from giving any opinion upon the Regency question, 7. His views of the French Revolution, 8. His continuing powers of memory, 10. His last illness, 11. His death, 11. His will, 12. His position among the lawyers of the 18th century, 13. Felicity of the life of a lawyer practising under him, 16. Solution of the charge that he knew no law, 17. Sermon written by him and preached by a bishop, 18. His demeanour in society, 20. His facetiæ, 21. Jokes on Serjeant Hill, 24. His advice to a general about to act as a colonial judge, 25. The space occupied by him in the public eye, 26. His habits of industry and temperance, 28. His defects and faults, 30. Without original genius, 30. His want of moral courage, 30. Defence of his public conduct, 32. Lampoon upon him supposed to be written by a Chief Justice, 33. His character by Smollett, 34. By other contemporaries, 34. By Lord Monboddo, 35. By Bishop Hurd, 36. By Bishop Newton, 36. Imitations of his manner of speaking, 37. Likeness of him, 38. Aspiration of the Author, 38.

CHAPTER XLI.

LIFE OF LORD KENYON, FROM HIS BIRTH TILL HE WAS APPOINTED CHIEF JUSTICE OF CHESTER.

Composition of this Memoir an unpleasant task for the biographer, 39. Family of the Kenyons, 40. Birth of Lord Kenyon, 41. His defective education, 42. He is apprenticed with an attorney, 42. His love of the desk, 42. His attempt to rival the Welsh bards, 43. His disappointment in not being taken into partnership with his master, 44. He is admitted a student at the Middle Temple, 45.

His misfortune in not being required to be initiated in liberal studies, 45. His exclusive attention to law, 46. His dislike of the theatre, 46. He writes reports of decisions of the Courts, 47. He is acquainted with Horne Tooke and Dunning, 47. His economical mode of dining, 48. He is called to the bar, 48. His slow progress, 49. He fags for Dunning, 49. He becomes a great case-answerer, 50. His merits as a draughtsman, 50. He fags for Lord Chancellor Thurlow, 51. He is made Chief Justice of Chester, 51.

CHAPTER XLII.

CONTINUATION OF THE LIFE OF LORD KENYON TILL HE WAS
APPOINTED MASTER OF THE ROLLS.

He is introduced into Parliament, 53. His impatience to meet a charge of bribery, 53. He is counsel for the defendants in the prosecution for deposing Lord Pigot, 54. How he came to be counsel with Erskine for Lord George Gordon, 55. His successful cross-examination of a witness, 55. His miserable speech to the jury, 56. Peril to the prisoner, 58. Glory of Erskine, 58. Kenyon Attorney-General to the Rockingham Administration, 59. His altercation with Sir James Mansfield, 60. His zeal against public accountants explained, 61. He adheres to Lord Shelburne, 63. He is turned out by the "Coalition," 64. His parliamentary conduct while in opposition, 64. Dismissal of the "Coalition Ministry," 66. Kenyon again Attorney-General, 66. He renews his attack on public accountants, 66. His conduct as Chief Justice of Chester, in the Dean of St. Asaph's case, 67.

CHAPTER XLIII.

CONTINUATION OF THE LIFE OF LORD KENYON TILL HE WAS
APPOINTED CHIEF JUSTICE OF THE KING'S BENCH.

Kenyon is made Master of the Rolls, 70. His vote in the Westminster election, 71. The bad advice he gave respecting the "Scrutiny," 71. Honourable conduct of Lord Eldon on this occasion, 72. Mr Fox's censure of the Master of the Rolls, 73. Kenyon is made a Baronet, 74. Sir Lloyd Kenyon and the Rolliad, 74. Letter from Sir Lloyd Kenyon to the High Bailiff of Westminster, 75. Kenyon as an Equity Judge, 77. Q. How far a covenant to refer to arbitration may be pleaded in bar to a suit or action? 80. Sir Lloyd Kenyon's merits as an Equity Judge, 80. Resignation of Lord Mansfield, 81. Sir Lloyd Kenyon appointed his successor, and raised to the peerage, 82.

CHAPTER XLIV.

LORD KENYON AS CHIEF JUSTICE OF THE KING'S BENCH.

Unpopularity of the appointment, 83. Lord Kenyon takes his seat in the House of Lords, 83. His speech on the insanity of George III., 84. He maintains that Mr. Hastings's impeachment had abated by

CONTENTS OF VOL. IV.

v

the dissolution of Parliament, 85. He opposes Mr. Fox's Libel Bill, 86. Questions proposed by him for the opinion of the Judges, 87. Lord Stanhope's speech to banter Lord Kenyon, 87. Lord Kenyon's answer, 88. Charge that he made a pecuniary profit by the abuses in the King's Bench Prison, 89. Lord Kenyon's improved tactics in self-defence, 91. His judicial character, 91. His Latin quotations, 92. His bad temper, 92. Account of his demeanour in Court by Espinasse, 92. His partialities and antipathies, 93. George III.'s congratulation to him on the loss of his temper, 94. His anxiety for the rights of the "legal estate," 94. His decision that no action at law can be maintained for a legacy, 95. Rule that a married woman shall never be permitted to sue or to be sued as a single woman, 95. His behaviour on the trial of *Rex v. Stockdale*, 96. His severe sentences in prosecutions for alleged sedition, 98. Pasquinade against imprisonment for debt, 98. John Frost's case, 98. *Rex v. Perry*, 99. Perversion of the clause in the Libel Bill enabling the Judge to give his opinion to the Jury on matter of law, 100. Stone is tried for treason before Lord Kenyon, 101. Trial of John Reeve for a libel on the House of Commons, 102. Trial of Gilbert Wakefield, 103. Trial of the proprietor of the *Courier* for a libel on the Emperor Paul, 105. Trial of Williams for publishing Paine's 'Age of Reason,' 106. Lord Kenyon's display of his knowledge of ecclesiastical history, 106. Trial of Hadfield, when the biographer first saw Lord Kenyon, 107. Proof of the prisoner's insanity, 108. Lord Kenyon interferes and puts an end to the trial, 108. Sound view of the question how far mental disease exempts from criminal responsibility, 108. Benjamin Flower's case, 110. Dialogue between Mr. Clifford and Lord Kenyon on moving for a writ of Habeas Corpus, 110. Lord Kenyon's attack on Lord-Treasurer Clifford and the ancient nobility, 111. Mr. Clifford's retaliation, 112. Lord Kenyon laid down the true constitutional doctrine since affirmed by Act of Parliament respecting the power of the two Houses to print and publish, 112. *Rex v. Earl of Abingdon*: Peer not privileged to publish speech delivered by him in the House of Peers, with a view to libel an individual, 114. Doctrine of consequential damage, 115. Rescue of the public from Surveyors, 116. Lord Kenyon's laudable zeal against manufacturers of slander, 116. Misled by his love for morality, 118. Lord Eldon's protest against Lord Kenyon's ultraism, 119. Lord Kenyon's indignation at being called a "legal monk," 120. By his hot temper, betrayed into the toleration of insolence, 120. Lord Chief Justice Kenyon kicked by John Horne Tooke, 121. Erroneous decisions of Lord Kenyon, 126. Criminal information for a *jeu d'esprit*, 126. Lord Kenyon overruled in *Haycraft v. Creasy*, 127. Lord Kenyon's fury against forestallers and regraters, 129.



altercation with Lord Stanhope, 258. Lord Ellenborough and the "DELICATE INVESTIGATION," 267. Lord Ellenborough a member of the Queen's Council, as Custodian of the King's person during the Regency, 274.

CHAPTER LI.

CONCLUSION OF THE LIFE OF LORD ELLENBOROUGH.

Trial of Lord Cochrane, 278. Trial of Dr. Watson for high treason, 281. Lord Ellenborough's tour on the Continent, 283. His prayer when his health and strength were declining, 283. Trial of William Hone, 284. He is unable to go the Summer Circuit, 286. Lord Ellenborough resigns his office, 288. Complimentary letter to him from the Prince Regent, 289. His death, 290. His epitaph, 291. His character, 292. Lord Ellenborough's Act, 292. His approval of a severe penal code, 293. His dislike of foreign laws, 296. His facetiae, 297. Lord Ellenborough in domestic life, 303. His figure and manner, 304. Imitation of the Chief Justice by Charles Mathews the comedian, 304. His portrait by Lawrence, 306. His style of living, 306. His children, 307.

CHAPTER LII.

LIFE OF LORD TENTERDEN, FROM HIS BIRTH TILL HIS ELEVATION TO THE BENCH.

Disadvantages and advantages in the task of writing this Memoir, 309. Lord Tenterden's father and mother, 310. Birth of Lord Tenterden, 311. His early education, 312. Lord Tenterden at Canterbury school, 312. Danger he ran in his fourteenth year, 313. Q. whether he was to be a hairdresser or a Chief Justice? 314. He is sent to the University, 316. He obtains a scholarship at Corpus, 317. His diligence and good conduct, 319. His prize poem, 320. His prize essay, 325. His Bachelor's degree, 327. His horsemanship, 328. He is appointed College tutor, 328. His acquaintance with Judge Buller, 329. He is entered of the Temple, 332. His industry as a law student, 333. He practises as a pleader under the bar, 334. He is called to the bar, 335. His success on the Oxford circuit, 335. The accident he met with, 336. His book on SHIPPING, 337. His business at Guildhall, 338. His large income, 339. His incompetency as an advocate, 339. His chief effort in oratory, 341. His conduct as Attorney-General in the Grand Circuit Court, 342. His marriage, 342. His wife, 344. His desire to be made a Judge, 346. He is disappointed, 346.

CHAPTER LIII.

CONTINUATION OF THE LIFE OF LORD TENTERDEN TILL HE WAS
ELEVATED TO THE PEERAGE.

He is a puisne in the Common Pleas, 348. He is transferred to the King's Bench, 350. He becomes Chief Justice of England, 353. Extraordinary excellence of the King's Bench as a Court of Justice while he presided over it, 355. His great merit as a Judge, 357. His subjection under a favourite counsel, 359. His discretion in avoiding disputes about jurisdiction, 362. His decisions.—The public have no common law right to the use of the sea-shore for bathing, 363. No action lies for pirating an obscene book, 366. His defence of the English doctrine of high-treason, 366. Libellous to say falsely that the Sovereign is afflicted with insanity, 367. Q. Whether the person who hires horses, with a driver, to draw his carriage for a day, is liable for the negligence of the driver? 369. The Cato Street conspiracy, 370. Improper proceeding in trying to forbid the publication of trials for treason till they are all concluded, 372. The Chief Justice's dislike of technical niceties, 373. Doubtful decisions by him, 373. His propensity to suspect fraud, 374. His doctrine about "care and caution" in taking negotiable securities overruled, 375. Q. Whether it would have been for his reputation that he had died a commoner? 376.

CHAPTER LIV.

CONCLUSION OF THE LIFE OF LORD TENTERDEN.

His degradation to the peerage, 378. Ceremony of his taking his seat in the House of Lords, 381. His maiden speech, 382. He opposes the repeal of the Corporation and Test Acts, 383. He opposes the Bill for Catholic Emancipation, 386. He opposes the Anatomy Bill, 389. He opposes the Bill for taking away capital punishment for forgery, 390. His efforts for amending the law, 390. His measure respecting prescription and tithes, 391. His sound views respecting parliamentary privilege, 394. He opposes the Reform Bill, 394. His last speech in the House of Lords, with his vow never again to enter the House if the Reform Bill passed, 396. His health declines, 398. His last circuit, 399. The long vacation before his death, 399. His last appearance in court, 400. His death, 401. His funeral, 401. His epitaph, 401. His character and manners, 402. Compliment to him by the Lord Mayor of London, 404. His recollections of Canterbury, 404. Character of Lord Tenterden by Lord Brougham, 406. By Mr. Justice Talfourd, 408. His love of classical literature and talent for making Latin verses, 409. Specimens of his Latin poems, 411. Present representative of the Chief Justice, 414.



LIVES

OF THE

CHIEF JUSTICES OF ENGLAND.

CHAPTER XL.

CONCLUSION OF THE LIFE OF LORD MANSFIELD.

LORD MANSFIELD lived nearly five years after his resignation, in the full enjoyment of all his mental faculties, memory included,—although his strength gradually declined. Since his house in Bloomsbury Square was burnt down, Kenwood had been his only residence; and here he remained, without being absent from it for a single night, till he breathed his last. He was much attached to the place: the great extent of the grounds gave ample scope for a display of his taste; he still went on planting and improving; he had great delight in showing the points from which the landscape appeared to most advantage; and he was gratified by the assurances which were truthfully poured out by his admiring friends, that there was nothing more charming to be seen within fifty miles of the metropolis.*

A.D. 1788-
1793.

Lord Mans-
field in
retirement.

* A few years ago, the fashionable world had an opportunity of appreciating
VOL. IV.

He resumed his study of the writings of Cicero, and, above all, he now prized his treatise *DE SENECTUTE*, conforming himself much to the precepts there inculcated for giving a relish to this portion of human existence.

Amidst the literary recreations and rural employments which made his days glide on delightfully, we might wish that he could have said with old Cato, "*Causarum illustrium, quasunque defendi, nunc quam maxime conficio orationes;*" but although he had taken pains in correcting his judgments, he seems to have been quite indifferent about his oratorical fame, and he never had any ambition to be an author.

In the year 1784 he had lost his wife, after a happy union with her of half a century. His domestic establishment was now regulated, and his home made cheerful, by two accomplished and affectionate nieces, daughters of Viscount Stormont.

The sudden cessation of professional occupation and political excitement is dangerous only to a man whose mind has not received early culture, and who is destitute of literary resources. Lord Mansfield in his retirement was never oppressed by *ennui* for a moment; and he found novelty and freshness in the calm, eventless life which he led. It should be mentioned, that his serenity was completed by a firm belief in the truths of religion, and the habitual observance of the pious rites which it prescribes.

As a striking proof of the powers of mind and felicity of expression which still distinguished him, I am enabled to lay before the reader a few sentences dictated

the taste of the great Lord Mansfield in the formation of this place, and seeing the trees which, in his old age, he had planted with his own hand, a most splendid *fête champêtre* being given there by his great-grand-nephew and repre-

sentative the present noble Earl;—from whose splendid success on that occasion the worshippers of the illustrious Chief Justice hoped that the *fête* would be annual.

by him (which might be expanded into a folio volume) on a subject very interesting to his native country. Lord Swinton, a judge of the Court of Session, in the year 1787 published a pamphlet recommending the introduction of jury trial into Scotland in certain specified civil actions, and requested that he might have the opinion upon the subject of the individual best qualified to consider it from his unprecedented experience of juries and his familiar knowledge of the law both of Scotland and England. This request was conveyed through Lord Henderland, another judge of the Court of Session, who was related to Lord Mansfield by blood, and was married to his niece. The great jurist, thus consulted as an oracle, was then disabled from writing by rheumatism in his hand, and, on the score of indisposition, civilly declined giving any opinion to Lord Swinton; but his niece, Lady Anne, acting as his amanuensis, wrote a note to Lord Henderland, which thus concludes:—"L^d H^d will be so good to say so much, and no more, to L^d Swinton; but the moment L^d M^d heard the papers read, he dictated the inclosed memd^m for L^d H^d's private use. He thinks the proposed introduction of juries is a very rash innovation, and will be attended with many consequences which no man alive can foresee."

His opinion upon the introduction of jury trial in civil cases in Scotland.

Here follows the memorandum which was inclosed, every line of which is worth a subsidy:—

"Great alterations in the course of the administration of justice ought to be sparingly made, and by degrees, and rather by the Court than by the Legislature. The partial introduction of trials by jury seems to me big with infinite mischief, and will produce much litigation.

"Under the words proposed, it may be extended almost to anything,—*reduction, restitution, fraud, injury*. It is curious that fraud, which is always a complicated proposition of law and fact, was held in England as one of the reasons for a court of

equity, to control the inconveniences of a jury trying it. The giving it to the desire of both parties might be plausible; but where one only desires that mode of trial it is a reason against granting it, because many causes and persons have popular prejudices attending them which influence juries.

"A great deal of law and equity in England has arisen to regulate the course and obviate the inconveniences which attend this mode of trial. It has introduced a court of equity distinct from a court of law, which never existed in any other country, ancient or modern; it has formed a practice by the courts of law themselves and by acts of parliament, bills of exceptions, special verdicts, attainments, challenges, new trials, &c.

"Will you extend by a general reference all the law and equity now in use in England relative to trials by jury? The objections are infinite and obvious. On the other hand will you specify particularly what their system should be? The Court of Session and the judges of England, added together, would find that a very difficult task."

These principles were unfortunately overlooked in the year 1807, when jury trial, exactly according to the English model, with its unanimity, special verdicts, and bills of exceptions, was introduced into Scotland. The experiment, I am afraid, has proved a failure, and Lord Mansfield's predictions have been fatally verified.

An amiable trait in his character, which distinguished him to the last, was, that he took a lively interest in the welfare of all connected with him. By his advice, two sons of Lord Henderland (the present Mr. Murray of Henderland, and Lord Murray, first Lord Advocate, afterwards a judge of the court of session) were sent to be educated at Westminster School.* The aged ex-Chief Justice was exceedingly kind to the boys, had them at Kenwood during the holidays, and sought to inspire them with a love of literature.

In a letter from Mr. Murray, not written for publica-

* It would appear that Lord Henderland was likewise influenced by the opinion of Dr. Johnson, with whom he had

discussed the merits of English public schools, in a party at "The Mitre," See Boswell's Life of Johnson, iii. 9.

tion, but from which I hope I may, without impropriety, make a few extracts, he says—

“I first saw Lord Mansfield when I went to Westminster School in 1787, and used occasionally to spend part of my holidays at Kenwood. He was very kind, Recollections of Lord Mansfield by his grand-nephew. treating me familiarly as a boy, and always called me *schoolfellow*. He took a great interest in all that was going on in Westminster School, used to talk of his boyish days, and relate anecdotes of what occurred when he was there. I remember one, of his having made a plum-pudding, and, there being no other apparatus for the purpose, it was boiled in his nightcap: he told this with great glee. He always drank claret, and had a small decanter containing a few glasses placed by him at dinner, which he finished.

“He still took pleasure in ornamenting his grounds. Some cedars in the wood opposite the house were planted by his own hand.

“He was a great admirer of Pope, and occasionally selected passages from his poems which he taught me to recite. His voice and modulation were beautiful.

“He told me he had conversed with a man who was present at the execution of the Blessed Martyr. How wonderful it seems that there should only be one person between me and him who saw Charles's head cut off!”

He used to have parties of King's Bench lawyers to spend a day with him, and I have myself His amusements. heard some of those who were present describe how agreeable he was. On one occasion they found him reading under a spreading beech-tree, when a young gentleman said to him rather flippantly, “Instead of listening to the wrangling of Westminster Hall, how much better for your Lordship to be ‘*recubans sub tegmine fagi*.’” He good-humoredly replied,—

“O Mellibose, Deus nobis hæc otia fecit.”

A great amusement for him was, to hear what was going on in the court of King's Bench. With this view his countryman, James Allan Park, who became famous by compiling his decisions on the law of mari-

time insurance, used to visit him almost every evening during Term, and to read to him what Lord Kenyon had been ruling in the morning. He bore with much composure the sneers at "the equitable doctrines which had lately been introduced into that court;" and he revenged himself by laughing at his successor's false quantities and misapplied quotations, which induced George III., at last, to advise the new Chief Justice "to give up his bad Latin, and stick to his good law."

Lord Mansfield's contemporaries being all swept from the stage, he wisely consoled himself by making acquaintance with the rising generation; and he rejoiced that he could still converse with the illustrious masters of wisdom to be found in his library. He justly thought contemptuously of the low state into which literature had fallen when Hayley was considered the successor of Pope; and he used to give as a toast, "YOUNG FRIENDS AND OLD BOOKS."

He never was considered avaricious; his establishment was upon a footing which became a wealthy nobleman, and he would sometimes give away money generously; yet he certainly had considerable pleasure in watching the enormous accumulation of his fortune. He neither invested it in the funds nor bought land with it, but had it all secured on mortgage, saying, "The funds give interest without principal, and land principal without interest, but mortgages both principal and interest." *

After his retirement, he took no part whatever in politics: like the gods of Epicurus, he looked down upon the events that were passing in the world without in any degree seeking to influence them. The last time he ever attended in the House of Lords was on the 22d of May, 1788, when his presence was required in con-

* It is said that, at the time of his death, the annual interest on his mortgages amounted to 30,000*l*.

sequence of some proceedings connected with a writ of error from the Court of King's Bench; and he assisted neither the Government nor the Opposition by his proxy.* It seems most wonderful that he should not have interfered in the unprecedented crisis which immediately followed, when the kingly office was for some months suspended by the insanity of George III. One would have supposed that the ex-Lord Chief Justice of England, who had been familiarly acquainted with the leaders of the Revolution effected exactly a century before, would, like his great rival, have been led to his seat, if unable to walk without support, and, at the risk of dying in the effort, would have proclaimed to his countrymen how, in his opinion, anarchy was to be warded off and the constitution was to be preserved. He once more showed that want of boldness which always prevented him from reaching the first rank of statesmen. As a sound constitutional lawyer, I think he must have come to the conclusion that the right of electing a regent arrogated to themselves by the two Houses of Parliament was wholly inconsistent with the principles of hereditary monarchy; and that the heir apparent was entitled to exercise the prerogatives of the Crown during the King's incapacity, as upon his natural demise. But he was probably afraid of avowing a doctrine which, though truly conservative, was most distasteful to all connected with the Government, on account of the transfer of power from one party to another which it was likely to produce; and he might have been reluctant to ally himself with Loughborough, who we now know, and he might then have discovered, had formed the desperate scheme of at once placing the

He abstains from giving any opinion upon the Regency question.

* I have ascertained these facts by searching the Lords' Journals; which give the names of all the peers present at every meeting of the House, and all the proxies entered, every session.

Prince of Wales upon the throne without the sanction of Parliament.* However this may be, Lord Mansfield quietly ruminated amidst his cedars at Kenwood while the furious struggle was going on almost within his hearing at Westminster, and when the phantom of royalty was evoked by a *talisman* called the GREAT SEAL. Like all good subjects, he rejoiced in the King's recovery, which rescued the country from such embarrassment, and he joined in the splendid illumination which celebrated that event. †

Nevertheless he still fostered a spite against Mr. Pitt, which he was at no pains to conceal in private conversation; and enjoying the difficulty into which the minister had fallen by his indiscretion respecting the Russian armament, he expressed a hope "that the power which had been acquired by empty rhetoric and a pretended wish for reform was drawing to a close."

But at the breaking out of the revolution in France he dreaded that the same wild love of liberty might be propagated in this country, and he was desirous that the Government should be supported. He took a very gloomy, and, as it turned out, a very just, view of this movement. His medical attendants now seem to have been his chief confidants. When the Constituent Assembly had agreed upon the first of the many Constitutions attempted by our Gallic neighbours, and this seemed for the moment to be generally popular, Mr. Combe, his apothecary, observed to him, "Well, my Lord, the troubles in France are now over." "*Over*, sir, do you say?" answered Lord Mansfield; "my dear sir, they are not yet begun!"

On another occasion, when he had a visit from Dr.

* See *Lives of the Chancellors*, vol. vi. ch. cxxx.

† On this occasion there was a grand

display of fireworks from Kenwood, to the delight of the inhabitants of Highgate and Hampstead.

Turton, his physician, he thus broke off a discussion respecting his symptoms:—

“Instead of dwelling on an old man’s pulse, let me ask you, dear Doctor, what you think of this wonderful French Revolution?”
Dr. Turton: “It is more material to know what your Lordship thinks of it.” *Lord Mansfield*: “My dear Turton, how can any two reasonable men think differently on the subject? *A nation* which, for more than twelve centuries, has made a conspicuous figure in the annals of Europe: a nation where the polite arts first flourished in the northern hemisphere, and found an asylum against the barbarous incursions of the Goths and Vandals: *a nation* whose philosophers and men of science cherished and improved civilisation, and grafted on the feudal system, *the best of all systems*, their laws respecting the descents and various modifications of territorial property:—to think that *a nation* like this should not, in the course of so many centuries, have learned *something* worth preserving, should not have hit upon some little *code of laws*, or a few principles sufficient to form one! Idiots! who, instead of retaining what was valuable, sound, and energetic in their constitution, have at once sunk into barbarity, lost sight of first principles, and brought forward a farrago of laws fit for Botany Bay! It is enough to fill the mind with astonishment and abhorrence! A constitution like this may survive that of an *old man*, but nothing less than a miracle can protect and transmit it down to posterity!”

Horrors broke out and succeeded each other even more rapidly than he had anticipated; and, old as he was, he lived to hear the news that, every vestige of liberty being extinguished in France, the Reign of Terror was inundating the country with blood, and Louis XVI., the constitutional king, was executed on the scaffold as a malefactor.

By Lord Mansfield’s advice, his nephew, Lord Stormont, henceforth took an active part in the debates of the House of Lords, as a defender of the Government; saying, “that he was called upon, not by dislike of one set of public men or preference of another, but by the duty of averting the danger which threatened the constitution of the country, to range himself under the

broad banner of the law, and to add one to the great phalanx that was to shield it from the poisoned arrows directed against it." *

Mr. Pitt now voluntarily offered the new grant of the earldom of Mansfield, with a direct remainder, to Lord Stormont, without which this nobleman would never have been a British peer.

The ex-Chief Justice was probably the more gratified by the coalition which took place with a portion of the Whigs as it led to the dismissal of Lord Thurlow, whom he had ever disliked, and the transfer of the great seal to Wedderburn, for whom he felt kindness, notwithstanding the political lubricity which had marked the career of this splendid adventurer and had brought some disgrace on their common country.

But the hour was at hand in which to the dying Lord Mansfield all worldly speculations were vanity, and he had only to think of the awful change by which he was to enter into a new state of existence. So completely had he retained his mental faculties, that, only a few days before his last illness, his niece, Lady Anne, having in his hearing asked a gentleman what was the meaning of the word *psephismata* in Mr. Burke's book on the French Revolution, and the answer being that it must be a misprint for *sophismata*, the old Westminster scholar said "No, *psephismata* is right;" and he not only explained the meaning of the word with critical accuracy, but quoted offhand a long passage from Demosthenes to illustrate it.

Though never afraid of death, towards which he looked with composure and confidence, he was always afraid of suffering *pro forma*, as he expressed it; and a few years previously he had with much earnestness exacted a solemn promise from the physician who

* 29 Parl. Hist. 1571.

attended him, "that he would not unnecessarily torment him, but that, when he from experience should think his time was come, he would let him die quietly." The time had arrived when this injunction was to be obeyed.

On Sunday, the 10th of March, 1793, although the night before he had been quite cheerful, and had with clearness expounded to Lord Stor-^{His last illness.}mont the merits of a law case then depending in the House of Lords, he did not talk at breakfast as usual, but seemed heavy, and complained of being very sleepy. He was placed in bed, and, his pulse being low, stimulants and cordials were ordered for him. On Monday he was rather better, and on Tuesday he desired to be taken up and carried to his chair; but he soon wished again to be in bed, and said, "Let me sleep! let me sleep!" It might have been expected that, in the wandering of his thoughts which followed, he might have conceived himself in some of the most exciting scenes of his past life, and that he might have addressed some taunt to Lord Chatham respecting the action for damages to be brought against the House of Commons, —or, like Lord Tenterden, he might have desired the jury to consider whether the publication and the *innuendoes* were proved on a trial for libel, cautioning them to leave the question of *libel or no libel* for the Court. But he never spoke more. On his return to bed he breathed freely and softly like a child, and with as calm and serene a countenance as in his best health, though apparently ever after void of consciousness. An attempt to give him nourishment having failed, his mouth was merely moistened with a feather dipped in wine and water. In this state he languished free from pain till the night of Wednesday the 20th of March, when he expired without a ^{His death.}groan "in a good old age, full of days, riches, and

honour." He had entered his 89th year; and as his life had been long and prosperous, so his death was such as he had desired. He was amply prepared for it. From the time when he was unable to attend his parish church, the communion had, at short intervals, been privately administered to him; and he was in the habit of piously declaring that he was ready to obey the summons from the world in which he had enjoyed so many blessings, contented and grateful.

Although he had long withdrawn from the gaze of mankind, the news of his death caused a deep sensation, and there was a general desire that he should have a public funeral. All the judges and members of the bar had resolved to attend it in a body; and Whig statesmen as well as Tory intimated a desire to testify their respect for his merits as a magistrate by joining in the solemnity. But, his will being opened, it was found that after expressing a wish that he should be buried in Westminster Abbey, modestly giving as a reason "the attachment he felt for the place of his early education," he expressly directed that his funeral should only be attended by his relations and private friends.

Accordingly his remains were deposited in
His funeral. Westminster Abbey in the same grave with those of his deceased wife, between the tombs of Lord Chatham and Lord Robert Manners; and there a splendid monument was erected to his memory, the workmanship of Flaxman,—the expense being defrayed by a legacy of 1500*l.* gratefully bequeathed for this purpose by a client for whom, when at the bar, by an extraordinary display of his eloquence, he had recovered a great estate.

His will, dated the 17th of April, 1782, all in his own handwriting, thus piously began: "Whenever
His will. it shall please Almighty God to call me to that state to which, of all I now enjoy, I can carry only

the satisfaction of my own conscience and a full reliance upon his mercy through Jesus Christ.”—He then goes on in very plain, clear, and untechnical language to make provision for those depending upon him, to leave legacies to friends, and to bequeath the rest of his property to his nephew Lord Stormont; thus concluding, with good sense and good feeling: “Those who are dearest and nearest to me best know how to manage and improve, and ultimately in their turn to divide and subdivide, the good things of this world which I commit to their care, according to events and contingencies which it is impossible for me to foresee, or trace through all the mazy labyrinths of time and chance.”

Lord Mansfield must, I think, be considered the most prominent legal character, and the brightest ornament to the profession of the law, that appeared in England during the last century. His position among the lawyers of the 18th century. As an advocate he did not display the impassioned eloquence of Erskine, but he was for many years the first man at the bar among powerful competitors. Both before a jury in the common law courts, and addressing a single judge in the courts of equity, by the calm exertion of reason he won every cause in which *right* was with him, or which was doubtful. There was a common saying in those days, “Mr. Murray’s *statement* is of itself worth the argument of any other man.” Avoiding the vulgar fault of misrepresenting and exaggerating facts, he placed them in a point of view so perspicuous and so favourable to his client, that the verdict was secure before the narrative was closed. The observations which followed seemed to suggest trains of thinking rather than to draw conclusions; and so skilfully did he conceal his art, that the hearers thought they formed their opinion in consequence of the workings of their own minds, when in

truth it was the effect of the most refined dialectics. For parliamentary oratory he was more considerable than any lawyer our profession could boast of till the appearance of Henry Brougham,—having been for many years in both Houses in the very first rank of debaters. Lord Somers entered parliament late in life, and could not speak without long preparation. Lord Cowper was much more ready; but he had not had the benefit of an academical education, and his political information was rather limited. Lord Harcourt hardly aspired to rise above the level of the Tory squires by whom he was surrounded. Lord Macclesfield was unpolished, though forcible; and Lord King was dull and tiresome. Lord Hardwicke had very moderate success in the House of Commons, and his weight in the House of Lords arose rather from his high judicial reputation than from his eloquence. Lord Camden's set speeches in the House of Lords were admirable;—but he had been found quite unequal to the noise and irregularities of the House of Commons. Dunning, amidst all this turbulence, was in his element, and was listened to almost as well as Charles Fox himself;—but he could not bear the stillness of the Upper House, and there he fell into insignificance. Even Lord Plunkett caused disappointment when he spoke in the House of Lords, after having been acknowledged in the House of Commons to be superior to Peel or to Canning. Neither in the one House nor in the other did Erskine ever do anything at all commensurate to his forensic reputation. Thurlow prevailed more by the shagginess of his eyebrows and the loudness of his vociferation than by his sentiments or his expressions; and the effect of Wedderburn's oratory, which was far more artistic, was ruined by his character for insincerity. When Lord Eldon had broken down in an attempt he made in the House of Commons to be humorous, he never aimed

at anything beyond the pitch of an Equity pleader; and Lord Redesdale's speeches in parliament would have been reckoned dull even in the Court of Chancery. Of Lord Mansfield's three successors—Lord Kenyon, Lord Ellenborough, and Lord Tenterden—the first affected a knowledge of nothing beyond law, except a few Latin quotations which he constantly misapplied;—the second, though a scholar, and a ripe and good one, was only a few months in the House of Commons, during which he did nothing beyond bringing in a law bill; and in the House of Lords he rather alarmed the Peers by violent ebullitions of indignation, than charmed or convinced them by polished reasoning;—the last, having devoted all his best years to the drawing of special pleas, never was a member of the House of Commons, and the few times that he addressed the Lords he seemed to be opening to the jury the issues joined on some very complicated record. But when Murray was in the House of Commons, the existence of administrations depended upon his giving or withholding from them the aid of his eloquence, and in the House of Lords he was listened to with increased respect and deference. The combination of this excellence with his other performances is certainly much to be wondered at; for, while his competitors were preparing for the approaching conflict by conning over the works of orators and poets, he was obliged to devote himself to the YEAR-BOOKS, and to fill his mind with the subtleties of contingent remainders and executory devises. Who is there that could have argued against Mr. Justice Blackstone in the morning concerning the application of the rule in Shelley's Case, and in the evening shown himself equal to Lord Chatham on the question of the right of the British parliament to tax America, or the policy of declaring war against Spain?*

* Soon after his death, the following tribute was paid to his powers as an

Nothing remains to be said for the purpose of proving that he was the first of Common Law judges. Looking to the state of the court of King's Bench in his time, it is impossible not to envy the good fortune of those who practised under him. The most timid were encouraged by his courtesy, and the boldest were awed by his authority. From his quickness, repetition and prolixity were inexcusable; and there was no temptation to make bad points, as sophistry was sure to be detected, and sound reasoning was sure to prevail. When the facts were ascertained, the decision might be with confidence anticipated; and the experienced advocate knew when to sit down, his cause being either secure or hopeless. The consequence was, that business was done not only with certainty, but celerity; and men making many thousands a year had some leisure both for recreation and elegant literature.* We need not wonder that, being prosperous and happy under him, they were eager to pay him homage, and that they exulted in his paternal sway. We may form a notion of the love and respect with which he was regarded from the following appeal to him, when we know that the speaker was Erskine, the most fearless and independent of men, addressing him in the case of the Dean of St. Asaph :

Felicity of
the life of
a lawyer
practising
under him.

orator, by one who had often listened to him :—" As a speaker in the House of Lords, where was his competitor? The grace of his action, and the fire and vivacity of his looks, are still present to imagination; and the harmony of his voice yet vibrates in the ear of those who have been accustomed to listen to him. His Lordship possessed the strongest powers of discrimination; his language was elegant and perspicuous, arranged with the happiest method, and applied with the utmost extent of human in-

always just; but the character of his eloquence is that of being flowing, perspicuous, convincing, and affecting."—*Burton's Character of Classical Rhetoricians.*

* I have been told by Lord Erskine,—
" In Lord Mansfield's time, although the King's Bench monopolised all the common-law business, the Court often rose at one or two o'clock, — the papers, special, crown, and peremptory, being cleared; and then I refreshed myself by a drive to my villa at Hampstead."

images were often bold, and

"I am one of those," said he, "who could almost lull myself by these reflections from the apprehension of *immediate* mischief, even from the law of libel laid down by your Lordship, if you were always to continue to administer it yourself. I should feel a protection in the gentleness of your character; in the love of justice which its own intrinsic excellence forces upon a mind enlightened by science, and enlarged by liberal education; and in that dignity of disposition, which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security. But such a security is a shadow which passeth away. You cannot, my Lord, be immortal, and how can you answer for your successor? If you maintain the doctrines which I seek to overturn, you render yourself responsible for all the abuses that may follow from them to our latest posterity."^{*}

There was no grumbling against him except by long-winded orators, who complained that during their impassioned replies he sometimes read a newspaper; but he never did so till the evidence was closed and he was complete master of the case. He would then, by looking at the DAILY ADVERTISER, give a hint that the public time was wasted by the counsel. Never, from indulging his curiosity about political events, did he make a remark which showed that he was not aware of the real question to be tried, nor afford any encouragement to move for a new trial by inadvertences into which he had fallen.

The absurd cry that he knew no law, gained countenance only from the envy of the vulgar, who are always eager to pull down those who soar above them to their own level, and, in our profession, will insist that if a man is celebrated for elegant accomplishments he can have no law, and if he is distinguished as a deep lawyer that he can have no elegant accomplishments:—

Solution of
the charge
that he
knew no
law.

"The Temple late two brother-serjeants saw,
Who deem'd each other oracles of law :

^{*} Erskine's Speeches, i. 261.

With equal talents these congenial souls,
 One lull'd the Exchequer, and one stunn'd the Rolls;
 Each had a gravity would make you split,
*And shook his head at MURRAY as a wit.**

I cannot adopt Dr. Johnson's refutation of the charge,—“As to Lord Mansfield's not knowing law, you may as well say that a coachman who has driven a stage several times a day for twenty years between London and Brentford does not know the road,”—for no experience in practice, without a proper foundation by long study will make a good lawyer; but in this instance we have before our eyes stupendous proofs of juridical knowledge, and the best answer is *CIRCUMSPICE*.

It has been said reproachfully, that, although he was a member of the legislature for half a century, we have no “Lord Mansfield's Act.” Yet when our *CIVIL CODE* shall be compiled, a large portion of it, and one of the best, will be referred to his decisions. The observation has been truly made, that “he has done more for the jurisprudence of this country than any legislator or judge or author who has ever made the improvement of it his object.”†

Unless Cowper's suggestion, that the manuscripts of original works from his pen were burnt in the riots of 1780, be true, he never wrote anything for the press. He was master, however, of a correct classical English style,—a very rare accomplishment among his professional contemporaries.‡

We have a curious specimen of this in a sermon which he wrote for his friend and *protégé* Bishop Johnson, who was suddenly called upon to preach in Westminster

Sermon
 written by
 him and
 preached by
 a bishop.

* “*Frater erat Romæ consulti rhetor; ut alter
 Alterius sermone meros audiret honores,*” &c.

† Welsby, 448.

‡ Lord Chancellor Northington, his schoolfellow at Westminster, could not write grammatically. After Bacon, Mr.

Justice Blackstone was the first practising lawyer at the English bar who, in writing, paid the slightest attention to the selection or collocation of words.

Abbey on the 29th of November, 1759, being a day of thanksgiving appointed to be observed for the signal successes with which his Majesty's arms had been blessed. A vote of thanks was passed by the Lords spiritual and temporal to the preacher for *his excellent discourse*, and he was ordered to "cause the same to be forthwith printed and published." * It accordingly was given to the world as the composition of "James, by Divine Providence Lord Bishop of Worcester." The most remarkable feature in it is its inculcation of "good revolution principles;" showing a great change of sentiment since the times when the Chief Justice and the Bishop, supping at Mr. Vernon's the Jacobite mercer in Cheapside, drank the Pretender's health upon their knees. The sermon,—which is from the text "*Blessed be the name of God for ever and ever, for wisdom and might are His*,"†—after dwelling upon the special interpositions of Providence in favour of this nation, particularly in dispersing the Spanish Armada, thus proceeds:—

"The same Providence, propitious to the liberties and the happy constitution of this country, in the next century gave a prosperous course to a fleet set out for the deliverance of this kingdom from arbitrary power, superstition, and slavery."

It afterwards follows up a panegyric on the virtues of George II. with the following prayer:—

"May that God whose providence he devoutly adores in these his dispensations, give him a farther increase of glory and happiness by fresh advantages over his enemies; and, in His own good time, crown these important successes in war, and complete his happiness by making him the instrument of securing and establishing to us the solid and substantial blessings of peace! *And may the happiness we enjoy by his government be perpetuated to us under his family to the latest posterity!*"

* Lords' Journals, 3rd Dec. 1759.

† Holl. 488, 491, 497.

† Dan. ii. 20.

There is no equivoue here like "the King *over the water*." But I doubt not that both the Bishop and the Judge were now sincere, and that, the cause of the Stuarts being hopeless, they exulted in the prospects which the country had on the accession of a young prince into whose mind they had assisted to instil the doctrine of the divine right of kings, together with a horror of that religion which had proved the ruin of the exiled family.

Lord Mansfield appeared nowhere to greater advantage than in the social circle. He did not make a display of condescension like a low-bred man, who, accidentally reaching an elevated position, wishes kindly to notice his former associates. He did not imitate those who, by the joint exertion of a great memory and a loud voice, quite unconscious of doing anything amiss, put an end to conversation by a perpetual pouring forth of observations and quotations which may be useful in an encyclopædia, but which are tiresome in a lecture. He always comported himself like a well-bred gentleman among his equals. He considered that men are to gain renown in the field of battle, in the forum, and in the senate, but that society is for relaxation; and instead of making people despise themselves and hate him by the overwhelming proof of superior powers and acquirements, he studied to render others dearer to themselves, and consequently to inspire into them a benevolent feeling towards himself, by giving them an opportunity of contributing to the general amusement, and of bringing out the information which they peculiarly possessed. His general rule was, to reward every man's jest with a smile, although he could not conceal his dislike to a bore or a coxcomb. According to the account of one who had been intimately acquainted with him for many years, "he was always as ready to hear as he was to

His demeanour in society.

deliver an opinion. The facility of conversing with ease and propriety he retained to the very last, and he was as quick at reply in his latter years as at any period of his life: whether he supported his own arguments or refuted those of his adversary, his observations were delivered with that judgment and grace which evinced the precision of a scholar and the elegance of a gentleman."*

Although he had too much taste systematically to aim at jocularity, there are *facetie* of his which still enliven the traditions of Westminster Hall.—An old Jew, who was dressed in a tawdry suit of clothes covered with gold lace, justifying as bail before him in an action brought to recover a debt of small amount, having sworn that he was worth double the sum, and having enumerated property belonging to him of much greater value, was still examined and cross-examined, and teased and badgered, by Serjeant Davey,—till at last the Chief Justice exclaimed, "For shame, brother Davey! don't you see that he would *burn* for the money?"

His facetie.

Trying a prisoner at the Old Bailey on a charge of

* See Holliday, 475. The following description of his conversational powers is by Richard Cumberland:—"I cannot recollect the time when, sitting at the table with Lord Mansfield, I ever failed to remark that happy and engaging art which he possessed of putting the company present in good humour with themselves; I am convinced they naturally liked him the more for his seeming to like them so well. This has not been the general property of all the witty, great, and learned men whom I have looked up to in my course of life. He would lend his ear most condescendingly to his company, and cheer the least attempt at humour with the prompt payment of a species of laugh; which cost his muscles no exertion, but was merely a subscription that he readily threw in towards the general hilarity of the table.

He would take his share in the small talk of the ladies with all imaginable affability; he was, in fact, like most men, not in the least degree displeased at being incensed by their flattery."—*Memo.* ii. 344.

"That his manners," says Lord Brougham, "were polished and winning, can easily be believed from the impression his public appearances uniformly made. But when to these were added his great and varied knowledge, chiefly of a kind available to the uses of society, his cheerful spirits and mild temper, his love of harmless pleasantry, and his power of contributing towards it by a refined and classical wit, it is not difficult to understand what the reports mean which unite in describing him as fascinating beyond almost all other men of his time."—*Statesmen*, i. 121, 122.

stealing in a dwelling-house to the value of forty shillings, when this was a capital offence,—he advised the jury to find a gold trinket, the subject of the indictment, to be of less value. The prosecutor exclaimed, with indignation, “Under forty shillings, my Lord! Why the *fashion*, alone, cost me more than double the sum.” Lord Mansfield calmly observed, “God forbid, gentlemen, we should hang a man for *fashion’s sake*!”

An indictment was tried before him at the assizes, preferred by parish officers, for keeping an hospital for lying-in women, whereby the parish was burdened with bastards. At the opening of the case he expressed doubts whether this was an indictable offence, and, after hearing a long argument in support of it, he thus gave judgment:—“We sit here under a commission requiring us to *deliver* this gaol, and no statute has been cited to make it unlawful to *deliver a woman who is with child*. Let the indictment be quashed.”

Macklin, against whom he might be supposed to entertain some spite for libelling his countrymen under the names of *Sir Archy Macsarcasm* and *Sir Pertinax Macsycophant*, recovered a verdict, with 700*l.* damages, in an action tried in the King’s Bench for a conspiracy to hiss him off the stage. After the verdict was pronounced, the magnanimous player said, “My Lord, my only object was to vindicate, before the public, my own character and the rights of my profession; and, having done so, I waive the damages awarded to me.” *Lord Mansfield*: “Mr. Macklin, I have many times witnessed your performance with great delight; but, in my opinion, you never *acted* so finely as in the last scene of this piece.”

Having met at supper the famous physician, Dr. Brocklesby, he entered into familiar conversation with him, and interchanged some stories a little trenching

on decorum. It so happened that the Doctor had to appear next morning before Lord Mansfield in the witness-box; when, on the strength of last night's doings, the witness nodded, with offensive familiarity, to the Chief Justice, as to a boon companion. His Lordship, taking no notice of his salutation, but writing down his evidence, when he came to summing it up to the jury, thus proceeded:—"The next witness is one *Rocklesby* or *Brocklesby*, *Brocklesby* or *Rocklesby*,—I am not sure which,—and, first, *he swears that he is a physician.*"

Trying an action which arose from the collision of two ships at sea, a sailor, who gave an account of the accident, said, "At the time, I was standing abaft the binnacle." Lord Mansfield asked "where is abaft the binnacle?" upon which the witness, who had taken a large share of grog before coming into court, exclaimed, loud enough to be heard by all present, "A pretty fellow to be a judge, who does not know where abaft the binnacle is!" Lord Mansfield, instead of threatening to commit him for his contempt, said, "Well, my friend, fit me for my office by telling me where *abaft the binnacle* is; you have already shown me the meaning of *half seas over.*"

Lord Chief Baron Parker, in his 87th year, having observed to Lord Mansfield, in his 78th, "Your Lordship and myself are now at *sevens* and *eights*," the younger Chief replied, "Would you have us be all our lives at *sizes* and *sevens*?—but let us talk of young ladies, and not of old age."

After Parker had resigned, he continued to enjoy vigorous health; while Sir Sydney Stafford Smyth, who succeeded him, was often prevented, by infirmity, from attending in Court: upon which Lord Mansfield observed, "The new Chief Baron should resign in favour of his predecessor."

There was only one man at the bar to whom Lord Mansfield did not behave with perfect courtesy; and the temptation to *quiz* him was almost irresistible. This was Serjeant Hill, a very deep black-letter lawyer, quite ignorant of the world, and so incapable of applying his learning that he acquired the nickname of *Serjeant Labyrinth*. In an argument which turned entirely on the meaning of an illiterate old woman's will, he cited innumerable cases from the YEAR-BOOKS downwards; till Lord Mansfield at last asked, "Do you think, brother Hill, that though these cases may occupy the attention of an old woman, *this* old woman ever read them? or that any old woman can understand them?"

On the trial of an ejectment, a deed being offered in evidence which purported to be an "*indenture*," but which, instead of having its parchment edge running *zig-zag* as usual, appeared to have been cut quite straight, Serjeant Hill, for the defendant, objected that it could not be received in evidence, because "the law says that such a conveyance of real property must be by *indenture*; and this instrument is not an indenture, for there must be two parties to an indenture; therefore there are two parts of it, one to be executed by each party; the counterparts must be written on the same piece of parchment, and then cut in a waving line, so that, as a guard against forgery, they may fit in when applied to each other: the instrument is thus called an *indenture*, because it is *instar dentium*." He then fortified his argument by many *dicta* from the text-writers, and decisions from the YEAR-BOOKS. Lord Mansfield: "Brother Hill, hand me up the deed." Having applied it to his right eye, while he closed the left, and looked for some time along its edge, he thus pronounced judgment:—"I am of opinion that this is not a straight mathematical line; therefore it is *instar*

dentium, and comes within your own definition of an *indenture*. Let it be read in evidence."

The same Serjeant, who had very little respect for the law of any living judge, arguing a question about whether there was sufficient evidence to support an action of trespass for breaking a hole through a wall which separated the houses of the plaintiff and the defendant, Lord Mansfield suggested that, although the hole was proved to be there, and the defendant had used it, possibly it might long before have existed there. The Serjeant thereupon, in rather an impertinent manner, exclaimed, "I should like any real lawyer to tell me whether there be any authority in the books for such a presumption?" *Lord Mansfield*: "I rather think, brother Hill, that you will find the point mooted in the case of "*Pyramus and Thisbe*;"* and, in the report of that case, if I remember right, it is said,—

"Fissus erat tenui rima, quam duxerat olim,
Cum fieret, paries domui communis utrique.
Id vitium nulli per sæcula longa notatum."†

A general officer in the army, a friend of Lord Mansfield, came to him one day in great perplexity, saying that he had got the appointment of His advice
to a general
about to act
as a colonial
judge.
governor of a West India island; which made him very happy till he found that he was not only to be commander-in-chief, for which he thought himself not unfit, but that he was likewise required to sit as chancellor and to decide causes, whereas he was utterly ignorant of law and had never been in a court of justice in his life. Lord

* 400 Mat. 55.

† The Serjeant was helpless in court, the laugh being always turned against him; but he revenged himself by writing in the margin of his law books many contemptuous observations on Lord Mansfield, which may now be seen in

Lincoln's Inn library. He survived to my time; and, although he had ceased to go into court, I have seen him walking up and down in Westminster Hall, wearing a great shovel hat, attached to his head with a silk handkerchief tied round his chin.

Mansfield said to him, "Be of good cheer—take my advice, and you will be reckoned a great judge as well as a great commander-in-chief. Nothing is more easy; only hear both sides patiently—then consider what you think justice requires, and decide accordingly. But never give your reasons;—for your judgment will probably be right, but your reasons will certainly be wrong." In telling the anecdote to his grand-nephew, the present Mr. Murray of Henderland, he added, "I was two or three years afterwards sitting at the Cock-pit upon Plantation appeals, when there was one called from my friend and pupil, the General,—which the losing party had been induced to bring on account of the ludicrously absurd reasons given for the judgment, which indeed were so absurd that he incurred some suspicion of corruption, and there was a clamour for his recall. Upon examining it, however, I found that the judgment itself was perfectly sound and correct. Regretting that my advice had been forgotten, I was told that the General, acquiring reputation by following it, began to suppose himself a great lawyer; and that this case brought before us was the first in which he had given his reasons, and was the first appealed against."

By the display of the wonderful powers and attainments to which I have referred, Lord Mansfield more steadily filled a large space in the public eye than any civilian of his generation; and, sitting on his tribunal, he had acquired a fame equal to Wolfe or to Rodney. Of this we have an instance in the following dialogue at the table of Dr. Scott (afterwards Lord Stowell), at which many of the most distinguished men of the day were present:—*Johnson*: "Every man thinks meanly of himself for not having been a soldier, or not having been at sea." *Boswell*: "Lord Mansfield does not." *Johnson*: "Sir,

The space
occupied by
him in the
public eye.

if Lord Mansfield were in a company of general officers and admirals, who have been in service, he would shrink; he'd wish to creep under the table." *Boswell*: "No; he'd think he could *try* them all." *Johnson*: "Yes, if he could catch them; but they'd try him much sooner. No, sir; were Socrates and Charles the Twelfth of Sweden both present in any company, and Socrates to say 'Follow me, and hear a lecture in philosophy,' and Charles, laying his hand on his sword, to say 'Follow me, and dethrone the Czar,' a man would be ashamed to follow Socrates."* The compliment of Boswell may have little weight; but Johnson here allows that Lord Mansfield, though of a nation whom he abhorred and wished to disparage, was the best instance which England then afforded of an illustrious non-combatant, and he brackets him with the greatest of Greek philosophers. Nor was the stern Scot-hater on this occasion influenced by any soothing homage or personal familiarity; for, strange to say, Lord Mansfield and he had never met—as we learn from another dialogue between the same interlocutors. *Boswell*: "Lord Mansfield is not a mere lawyer." *Johnson*: "No, sir: I never was in Lord Mansfield's company; but Lord Mansfield was distinguished at the University. Lord Mansfield, when he first came to town, 'drank champagne with the wits.' He was the friend of Pope."†

It would be highly instructive, considering Lord Mansfield's multiplicity of engagements, all of which he fulfilled so admirably, to have learned what were

* Life of Johnson, iii. 287.

† Life of Johnson, ii. 161. He softened his mortification by the delusive belief that Wm. Murray had been *caught very young*,—and he considered Lord Mansfield as in reality an Englishman when he gave his celebrated answer to the question—"As you praise Buchanan

so much, although he was a Scotchman, what would you have said of him, Dr. Johnson, if he had been an Englishman?" "Sir, I would not have said of him what I now *do say*,—that he was the only great man his country ever produced."

the rules he laid down for the distribution of his time; but all we know, and this should ever be borne in mind by those who would rise to eminence, that he was habitually industrious and habitually temperate. A sentence given him as a copy, when he began to learn text-hand at Perth School, was

Opere peracto ludemus.

This he used often to repeat in after-life, and always to act upon. For example, when the great case of *Doe ex dem. Taylor v. Horde* was depending, which required a research into some of the most recondite points of the law of real property, he thus wrote to a friend:—"I am very impatient to discharge myself entirely of it. While the company is at cards I play my rubbers at this work, not the pleasantest in the world; but what must be done I love to do and have it over." He would sometimes talk of the *dolce far niente*; and would quote the saying, "*Liber esse mihi non videtur, qui non aliquando nihil agit.*" But, in truth, he refreshed himself by varying his occupation, and allowing one faculty of his mind to repose while he called another into activity. Of course, such a system was inconsistent with a deranged stomach and aching temples. By nature (Dr. Johnson would probably have said *from early endurance*) he had a marvellous power of bearing abstinence. "After having waited for his regular meal, through the press of much and tedious business, to a late hour at night, he has repeatedly said that he never knew what it was to be thirsty, or faint with hunger."*

* Holl. 56. There might be a curious chapter, in a treatise *DE CLARIS ORATORIBUS*, on the mode of their preparing themselves physically. Sheridan could not speak without a pint of brandy;

and a celebrated speech in the House of Lords is said to have been inspired by mulled port. One of the greatest orators of the House of Commons is most powerful and imaginative after eating a pound

Yet he was no water-drinker ; and reverently recollecting how wine was supplied to the guests assembled at the marriage in Cana, on which so many epigrams had been made at Westminster, he thought there could be no sin in the moderate use of it. He had sufficient control over himself to be temperate without being ascetic. He always retained the Scottish taste for claret, which he had heard so loudly extolled and seen so liberally quaffed in his early youth,—and he said that in experience he found it to yield the most pleasure with the least risk of ill consequence. Insisting that it was peculiarly adapted to the temperament of Scotchmen, he would repeat John Home's lines, made when the tax was laid upon it, and sloe-juice became the substitute :—

“ Bold and erect the Caledonian stood ;
 Old was his mutton, and his claret good.
 ‘ Let him drink port,’ an English statesman cried :
 He drank the poison, and his spirit died.”

However, while he allowed his friends, like the Baron of Bradwardine, to indulge in a “tappit hen,” he confined himself to a miserable cruet-full, set before him as his stint.

He gave very handsome dinners, not only to his aristocratic acquaintances, but to the Bar ; and every Sunday night in the winter season he had a *levée*, which was attended by distinguished men in all classes of society. This practice was then reckoned quite decorous among clergy as well as laity.* But though

of cold roast beef, and drinking a quart of small beer ; while it is a well-known fact, that the finest speech of the younger Pitt was delivered immediately after a violent fit of vomiting. Some recommend tea ; some camphor julep ; and one orator, that he may electrify his audience, as often as he is going to speak repairs to the Polytechnic and receives several shocks from a Leyden jar.

* Boswell, in mentioning Johnson's Tour to the Hebrides, published in 1775, says, “ I found his ‘Journey’ the common topic of conversation in London, at this time, wherever I happened to be. At one of Lord Mansfield's formal Sunday evening conversations, strangely called *levées*, his Lordship addressed me — ‘ We have all been reading your travels, Mr. Boswell.’ I answered, ‘

he so far conformed to fashion, it ought to be recorded to his credit, that in an age of great profligacy, when kings, ministers, and judges, with no obloquy and little scandal, openly violated the rules of morality, he always set a bright example of the domestic virtues.*

That I may not be supposed, at the close of my biographical labours, to have degenerated into an indiscriminate panegyrist of my hero, I must notice his defects and his faults. He cannot be considered a man of original genius. With great good sense he selected, he adapted, he improved,—but he never invented. It is only in Virgil's last category of immortals that he is to be inscribed:—

His defects
and faults.

Without
original
genius.

“Quique sui memores alios fecere merendo.”

It must likewise be admitted that, from a want of moral courage, he quailed not only under the ascendancy of Lord Chatham, whom beings of a superior order to our species might have been afraid to encounter,—but of Lord Camden, who was much his inferior in powers of mind and in acquired knowledge. His cry of *Craven!* when the lists had been stretched and the trumpet had sounded for a passage of arms on the Libel field, lowered his character, and must have been a source of painful remem-

His want
of moral
courage.

was but the humble attendant of Dr. Johnson.' The Chief Justice replied, with that air and manner which none who ever saw and heard him can forget, 'He speaks ill of nobody but Ossian.'—(Vol. ii. p. 332.) How delightful if the great lexicographer himself had been there, and we could have had from Boszzy an account of the conference between him and the great lawyer who had drunk champagne with the wits! I wish that he had kept up his literary connections, and that he had been known to us as the

friend of Johnson as well as of Pope.

* There seems reason to think, that those who were the most intolerant on religious subjects were then often the most immoral: and it is an undoubted fact, that the eighteenth century, in which Dissenters and Roman Catholics were persecuted, was notorious for infidelity and immorality; while the nineteenth century, along with liberality, has witnessed the spread of true piety, and an increased regard for the precepts of religion.

brance for himself to his dying day. With boldness, he might have gained a victory which would have added new lustre to his name.*

A more serious defect was his want of *heart*. No one had a right to complain of him; he disappointed no just expectation of favour, and he behaved with kindness to all within the sphere of his action;—but all that he did might have been done from a refined calculating selfishness, with a view to his own comfort and credit. He had no warmth of affection; he formed no friendships; and he neither ^{Without warmth of affection.} made exertions nor submitted to sacrifices purely for the good of others.† The striking fact to prove that he *reasoned* rather than *felt* is, that he never revisited his native land, from the time when he first crossed the border riding a highland pony on his way to Westminster; although he left behind him his father and mother, who survived many years, and were buried in the church at Scoone. It certainly is a very melancholy task to return to the haunts of early life after a long absence, and, little interest being excited by the new faces of the rising generation, a terrible shock is given by the ravages of time among our associates. The touching verses of Morris rush into our recollection,—

“There’s many a lad I loved now dead,
And many a lass grown old;
And, as the lesson strikes my head,
My weary heart grows cold.”‡

But surely it might have been some compensation to

* 16 Parl. Hist. 1321; ante, p. 487.

† Although he never lived in habits of much intimacy with very eminent lawyers, he was not stingy in praising them. He said that, “when Lord Hardwicke pronounced his decrees, Wisdom herself might be supposed to speak;” and on Erskine, whom he had advised to go to the bar, bursting out with lustre,

he exclaimed,—

“Cedite Romani; cedite Græci.”

‡ Captain Morris’s “Reasons for Drinking.”

“But wine, for a while, drives off despair;

Nay, bids a hope remain:
And this I think’s a reason fair
To fill my glass again!”

him to have stood upon the spot where he first caught a trout in the river Tay;—to have seen his name, carved half a century before with his own hand, on the walls of the school-house at Perth;—to have recollected the pride with which he had returned home to announce that he was Dux;—to have witnessed the satisfaction of his wondering townsmen in finding their prognostics of his success in life more than fulfilled;—to have once more been shaded by the tree under which he had taken leave of his parents,—to have again embraced them, or to have wept over their graves. But these things would not have helped him on in the career of ambition, and he cared for none of them.

From my Whig propensities, I may be expected to take an unfavourable view of his public conduct; but here I discover little ground for censure. No candid man can blame his early predilection for the *white rose*; or will say that he was guilty of any culpable inconsistency in taking office under the established government when the incurable infatuation of the Stuarts had been made manifest, and the nation was enjoying freedom and prosperity under the Brunswick line. He ever afterwards faithfully served the Crown to which he had sworn allegiance. As a party man, he was by no means liable to the charge of versatility and venality which weighed down his countryman Wedderburn. He had never pretended to be a "patriot," and he never deserted any leader under whom he had enlisted. Although he was called a Whig in the reign of George II., the principles which he then avowed were the same with those which he acted upon in the reign of George III. when he was called a Tory. These were essentially Tory principles, and I individually dissent from them, but, as his biographer, I am not entitled to say that they were wrong. He entertained them sincerely, and acted upon them

Defence of
his public
conduct.

steadily, without ever suffering his love of prerogative or his jealousy of popular privileges to betray him into any act of sycophancy or of oppression. He ought to have been aware, however, of the unconstitutional nature of the arrangement by which, being Chief Justice of the King's Bench, he was, under various administrations, a member of the Cabinet; and the very boast that he made in Wilkes's case, *that he had no concern in originating the prosecution*, proved his consciousness of the incompatibility of the duties which he had undertaken to perform. I am afraid, likewise, that after Lord Bute's resignation, and on several subsequent occasions, he gave advice in the royal closet as the "King's friend," and that he exercised power without official responsibility. But these aberrations were thought of small importance eighty years ago,—when, although our constitution was theoretically the same, its practical working was very different from what we are accustomed to under the auspicious rule of Queen Victoria!

I add a few strictures upon the character of Lord Mansfield by others who may be much more deserving of the attention of the reader. And I begin with a lampoon, to comfort those who are now the objects of similar attacks, and to show them that, if they have any real merit, it will not be long clouded even by the grossest scurrility. Thus was he described in an article in a newspaper, supposed to be written by a professed friend holding a high judicial situation* :—

"Full of the *tatterdemalion* honour of the man of quality, forsooth! of his own country, he used to insult the English suitors in harangues of virulence and abuse. Lampoon upon him supposed to be written by a Chief Justice. He had no persuasion in his manner, sweetness in his voice, nor energy in his expression; no variety of turn in tone and cadence, adapted to the purport of the matter he treated; but was cursed with a loud, clamorous *monotony*, and a disagreeable discordance in his

* Chief Justice Willes.

accents, as struck so harsh upon the ear that he seemed rather to scream than to plead; and, from thence, was called '*Orator Strix*,' or the Caledonian Screecher. He assumed a bullying audacity in his manner, and seemed, by a pertinacious importunity, to overbear rather than gain the bench. This faculty, however, recommended him to the notice of such solicitors as dealt among the *cunaille*, which, being much the larger part of the profession, supplied him with a competence of business.*

But Smollett, in his history of the reign of George II., when noticing the supporters of Mr. Pelham's administration, mentions Mr. Murray as entitled to the first place in point of genius:—

“This gentleman,” he continues, “the son of a noble family in North Britain, had raised himself to great eminence at the bar by the most keen intuitive spirit of apprehension, that seemed to seize every object at first glance; an innate sagacity, that saved the trouble of intense application; and an irresistible stream of eloquence, that flowed pure and classical, strong and copious, reflecting in the most conspicuous point of view the subjects over which it rolled, and sweeping before it all the slime of formal hesitation and all the intangling weeds of chicanery.”

His character by Smollett.

In a volume of Political Characters, published in the year 1777, to which some of the most distinguished writers of the day contributed, we find the following passage:—

By other contemporaries.

“However party prejudices may adopt their different favourites, and each labour in detracting from the merit of the other, it is, we believe, generally understood that precedence is allowed the Earl of Mansfield as the first magistrate that ever so pre-eminently graced that important station. The wisdom of his decisions, and unbiassed tenor of his public conduct, will be held in veneration by the sages of the law as long as the spirit of the constitution, and just notions of equity continue to have existence. No man has ever in an equal degree possessed that wonderful sagacity in discovering chicanery and artifice, and separating fallacy from truth, and sophistry from argument, so as to hit the exact equity of the case. He suffered not justice to be strangled in the nets

* Broadbottom Journal, June 27th, 1746.

of form. His genius is comprehensive and penetrating; and, when he judges it necessary, he pours forth sounds the most seductive, equally calculated to persuade and to convince. Among his rare qualifications may be added the external graces of his person, the piercing eye, the fine-toned voice, and harmonious elocution, and that happy arrangement which possesses all the accuracy and eloquence of the most laboured compositions."

Lord Monboddo, after pointing out the peculiar characteristics of the eloquence of Demosthenes, observes:—

"Upon this, so perfect model of eloquence, Lord Mansfield formed a chaste and correct style of speaking, suitable to business, and particularly the business of a judge, to whose office it belongs not only to determine controversies betwixt man and man, but to satisfy the parties that they have got justice, and thereby give ease and contentment to their minds; which I hold to be one of the great uses of law. In this Lord Mansfield, as it is well known, was so successful, that even the losing party commonly acknowledged the justice of his decrees." Then the critic thus apostrophises the object of his praise: "Having spent so many years of your life—more, I believe, than any other man of this age—in the administration of justice, with so much applause and public satisfaction, I hope, my Lord, you will bear with patience and resignation the infirmities of old age; enjoying the pleasure of reflecting that you have employed so long a life so profitably in the service of your country. With such reflections, and a mind so entire as yours still is, you may be said to live over again your worthy life, according to the old saying:

. . . . 'hoc est
Vivere bis, vita posse priore frui.'"

Bishop Hurd, after a general panegyric on Lord Mansfield for "his shining talents, displayed in every department of the state, as well as in the supreme court of justice, his peculiar province, which would transmit his name to posterity with distinguished honour in the public records of the nation," thus proceeds:—

"Of his conduct in the House of Lords I can speak with the more confidence because I speak from my own observation.

He was no forward or frequent speaker, but reserved himself, as was fit, for occasions worthy of him. In debate he was eloquent as well as wise; or, rather, he became eloquent by his wisdom. His countenance and tone of voice imprinted the ideas of penetration, probity, and candour; but what secured your attention and assent to all he said was his constant good sense, flowing in apt terms and in the clearest method. He affected no sallies of the imagination, or bursts of passion; much less would he condescend to personal abuse, or to petulant altercation. All was clear candid reason, letting itself so easily into the minds of his hearers as to carry information and conviction with it."

I shall conclude these extracts from English writers with the testimony of Bishop Newton, who had lived with him three quarters of a century:—

"Lord Mansfield's is a character above all praise; the oracle of law, the standard of eloquence, and pattern of all virtue, both in public and private life. It was happy for the nation, as well as for himself, that at his age there appeared not the least symptom of decay in his bodily or in his mental faculties; but he had all the quickness and vivacity of youth, tempered with all the knowledge and experience of old age. He had almost an immediate intuition into the merits of every cause or question which came before him; and, comprehending it clearly himself, could readily explain it to others: persuasion flowed from his lips, conviction was wrought in all unprejudiced minds when he concluded, and, for many years, the House of Lords paid greater attention to his authority than to that of any man living."

Beyond the Atlantic the reputation of Mansfield is as high as in his own country, and his decisions are regarded of as great authority in the courts at New York and Washington as in Westminster Hall. The following tribute to his memory is from Professor Story, one of the greatest jurists of modern times:—

"England and America and the civilised world lie under the deepest obligations to him. Wherever commerce shall extend its social influences; wherever justice shall be administered by enlightened and liberal rules; wherever contracts shall be expounded upon the eternal principles of right and wrong; wherever moral

delicacy and judicial refinement shall be infused into the municipal code, at once to persuade men to be honest, and to keep them so; wherever the intercourse of mankind shall aim at something more elevated than that grovelling spirit of barter in which meanness and avarice and fraud strive for the mastery over ignorance, credulity, and folly;—the name of Lord Mansfield will be held in reverence by the good and the wise, by the honest merchant, the enlightened lawyer, the just statesman, and the conscientious judge. The maxims of maritime jurisprudence, which he engrafted into the stock of the common law, are not the exclusive property of a single age or nation, but the common property of all times and all countries. They are built upon the most comprehensive principles and the most enlightened experience of mankind. He designed them to be of universal application, considering, as he himself has declared, the maritime law to be not the law of a particular country but the general law of nations. And such under his administration it became, as his prophetic spirit, in citing a passage from the most eloquent and polished orator of antiquity, seems gently to insinuate: ‘*Non erit alia lex Romæ alia Athenis; alia nunc, alia posthac; sed, et apud omnes gentes et omni tempore, una eademque lex obtinebit.*’ He was ambitious of this noble fame, and studied deeply and diligently and honestly to acquire it. He surveyed the commercial law of the Continent, drawing from thence what was most just, useful, and rational; and left to the world, as the fruit of his researches, a collection of general principles, unexampled in extent and unequalled in excellence. The proudest monument of his fame is in the volumes of Burrow and Cowper and Douglas, which we may fondly hope will endure as long as the language in which they are written shall continue to instruct mankind. His judgments should not be merely referred to and read on the spur of particular occasions, but should be studied as models of juridical reasoning and eloquence.”*

I have often in my youth conversed with men who had practised under Lord Mansfield, and who gave imitations of him. Erskine’s were particularly fine, and, avoiding everything of caricature and exaggeration, came up to the highest notion which could be formed of dignity, suavity, and impressiveness.† But the generation who witnessed

Imitations
of his
manner of
speaking.

* Story’s Miscellaneous Works, 411, 412.

† Erskine’s Mansfield was said to be as good as the late Lord Holland’s Thur-

low; to the excellence of which I can testify, having once seen and heard the original.

the tones and the manner of Lord Mansfield is gone, and that which listened to his imitators is fast passing away.

With his features and personal appearance all must be familiar, for there were innumerable portraits of him, from the time when he was habited as a King's Scholar at Westminster, and his countenance was illumined by the purple light of youth, till he was changed "into the lean and slippered pantaloon."* Fortunately, before reaching the seventh age of man, his *strange eventful history* was brought to a close. The two best representations of him are supposed to be a full-length, in judicial robes, by Reynolds, in the Guildhall of the city of London,—the scene of his greatest glory; and another, by Martin, in the hall of Christ Church College, Oxford, where he appears in an Earl's robes, sitting at a table, his right hand resting on a volume of Cicero, and a bust of Homer placed before him. There is likewise an admirable marble statue of him, by Nollekens, to be seen in Trinity Hall, Cambridge. Engravings and casts from these were formerly to be found almost in every cottage in Great Britain. But they will soon moulder into dust.

I have striven in this memoir to enable his admirers to follow the counsel given by Tacitus in concluding the life of Agricola: "*ut omnia facta dictaque ejus secum revolvant, famaque ac figuram animi magis quam corporis complectantur.*"† I wish I could venture to add, "*Quicquid ex eo amavimus, quicquid mirati sumus, manet mansurumque est in animis hominum, in æternitate temporum, famâ rerum.*"‡

Aspiration
of the
Author.

* The first extant is by Vanloo; and the last by Copley, a few weeks before his death.

† That mankind should continue to contemplate all that he said and did, and that, cultivating his fame, they should cherish the qualities of his mind rather

than the lineaments of his person.

‡ All that was amiable in him, all that was admirable, remains, and will for ever remain; being narrated in the annals of his country, and embalmed in the remembrance of a grateful posterity.

CHAPTER XLI.

LIFE OF LORD KENYON, FROM HIS BIRTH TILL HE WAS
APPOINTED CHIEF JUSTICE OF CHESTER.

I BEGIN this memoir at a time when I have the near prospect of being myself a CHIEF JUSTICE, and when I may calculate upon being subjected in my turn to the criticism of some future biographer.* On every account I wish to speak of Lord Chief Justice Kenyon in a spirit of moderation and indulgence. But I am afraid that my estimate of his character and judicial qualifications may call forth against me a charge of prejudice and detraction. Although till raised to the bench he was considered only "*leguleius quidam, cautus et acutus*," he was afterwards celebrated by dependents and flatterers as a GREAT MAGISTRATE, to be more honoured than the all-accomplished MANSFIELD. And from the stout resistance which then continued to be offered in Westminster Hall to all attempts to relieve the administration of justice from wretched technicalities, Lord Chief Justice Kenyon was long hailed as the Restorer of the rigid doctrines to be deduced from the YEAR-BOOKS.

Composition
of this
memoir an
unpleasant
task for the
biographer.

He was indeed a man of wonderful quickness of perception, of considerable intellectual nimbleness, of much energy of purpose, and of unwearied industry ;— he became very familiarly acquainted with the muni-

* 12 October, 1849.—It had then been intimated to me by the Prime Minister that upon the resignation of Lord Denman, which, from his severe attack of paralysis, was daily expected, I should be appointed his successor.

cial law of this land ;—he was ever anxious to decide impartially ; and he was exemplary in his respect for morality and religion. But never having supplied by study the defects of a very scanty education, he was unacquainted with every portion of human knowledge except the corner of jurisprudence which he professionally cultivated ;—he had not even the information generally picked up by the clever clerk of a country attorney from bustling about in the world ;—of an arrogant turn of mind, he despised whatever he did not know, and, without ever *doubting*, bitterly condemned all opinions from which he differed ;—giving way to the impulses of passion, he unconsciously overstretched the severity of our criminal code ;—he never sought to improve our judicial system either by legislation or by forensic decision ;—and his habits of sordid parsimony brought discredit on the high station which he filled. It is impossible, therefore, that in tracing his career I should be able to abstain from sometimes expressing regret and censure. I must thus incur the displeasure of some Englishmen who have been accustomed blindly to admire him, and of the whole Welsh nation, who [not from a penury of great men] worship him as an idol, and prefer him to their countryman Chief Justice Vaughan, who really was a consummate common-law judge, and to their countryman Sir Leoline Jenkins, who was both a profound civilian and a distinguished statesman. But as Lord Kenyon actually was Chief Justice of England for fourteen years,—in the prosecution of my plan I must proceed, whatever perils I may encounter.

One might have expected that we should have had a Kenyon pedigree extending to King ARTHUR, if not to ADAM ; but although the family, when transplanted to the Principality, became intensely Welsh, this event happened so recently as

Family
of the
Kenyons.

the commencement of the last century. In the reign of Charles II. the Kenyons were settled in Lancashire, one of them representing the borough of Clitheroe in the House of Commons, and another being deputy-governor of the Isle of Man under the Earl of Derby. The Chief Justice's grandfather, a younger brother without portion or profession, married the heiress of a Mr. Luke Lloyd, a yeoman, who had a small estate at the Bryn, in the parish of Hanmer, in the county of Flint; and their son, following a good example, gained, by marriage with the daughter of Mr. Robert Eddowes, the small estate of Gredington, in the same parish. He was now elevated to the rank of a country gentleman, and his name was inserted in the commission of the peace for Flintshire—a distinction of which Lord Kenyon used often to boast. The squire, or squireen, cultivated his own land, and in point of refinement was little above the low level of the surrounding farmers. He had a numerous family, whom he found it a hard matter to maintain and decently to educate.

His second son, who was to confer such honour upon Gredington, was born there on the 5th of October, 1732, and, out of compliment to his maternal grandmother, was baptized by the name of Lloyd. This boy, though rather of an irascible disposition, and accustomed, it is said, to beat his nurse with his little fists when she crossed him, early displayed very quick parts, and was very affectionate. Having been taught to read at a dame's-school in the village, he was sent to the free grammar-school in the neighbouring town of Ruthin, which had the reputation of being the best classical foundation in the Principality. Here he stayed long enough to acquire a little Latin in addition to his Welsh and English; but he never knew even the Greek characters, and of no other language had he a smattering, except some law

Birth of
Lord
Kenyon.

phrases in Norman French. He never advanced farther in the abstract sciences than the "Rule of Three;" and he is said piously to have believed to his dying day that the sun goes round the earth once every 24 hours.

Of four brothers he was declared to be the '*cutest*,' and he was dedicated to the law; but there was then no notion of his ever rising higher than being a Welsh attorney—advising the overseers of the adjoining parishes, and carrying on suits in the Court of Quarter Sessions for the county of Flint. Accordingly at the age of 14, he was articulated to Mr. Tomkinson, an attorney at Nantwich; and for five years he was taught to serve writs and to engross deeds. "Gracious Heaven!" exclaimed William Cobbett, who preferred enlisting as a common soldier to such occupations, "if I am doomed to be wretched, bury me beneath Iceland snows, and let me feed on blubber; stretch me under the burning Line, and deny me the propitious dews; nay, if it be thy will, suffocate me with the infected and pestilential air of a democrat's club-room; but save me, whatever you do, save me from the desk of an attorney." Lord Somers and Lord Macclesfield, although they submitted to the infliction, seemed to have felt the same disgust; and they could only get through their years of apprenticeship by purchasing books of elegant literature, and preparing themselves for the brilliant career to which they were destined. Young Kenyon was not only diligent and assiduous in doing his master's business, but was contented and happy, and never wished for a more amusing pastime than copying a long bill of costs, which gave the history of a lawsuit from the "Instructions to prosecute" to entering "Satisfaction on the Judgment Roll." He by no means confined himself to the mere mechanical part of

His defective education.

He is apprenticed with an attorney. A.D. 1745.

His love of the desk.

his trade; on the contrary, he thumbed a book explaining the practice of the courts, and he initiated himself in the mysteries of *conveyancing*, from which the profits of a country attorney chiefly arise.

Once he was actually seduced to "pen a stanza." A brother clerk of the name of Cadwallader, was an enthusiastic votary of the Muses, and twitted him with his degeneracy from his maternal ancestors, who had listened with rapture

*His attempts
to rival the
Welsh bards.*

"To high-born Hoel's harp and soft Llewellyn's lay.

The blood of the Lloyds was warmed in his veins, and he declared that although he felt he could not equal Cadwallo, Urien, and Modred, who, he was told, made huge Plinlimmon bow his cloud-topped head, he should show that at least he had a Welsh heart. He took for his subject "WYNNSTAY," the seat of Sir Watkin Williams Wynn, considered in North Wales as the representative of the Welsh princes—and thus he sang:—

"There WATKINS stood firm to Britannia's cause,
Guard of her ancient manners and her laws.
Oh, great, good man! borne on the wings of fame,
Far distant ages shall revere thy name;
While Clwyd's streams shall lave the verdant meads,
And Snowdon's mountains raise their lofty heads;
While goats shall o'er thy hills, O Cambria, stray,
And day succeed to night, and night to day,
So long thy praise, O WILLIAMS, shall remain
Unsolled, free from dark oblivion's chain."

He was himself so much pleased with his composition that he sent it to Gredington, where it was loudly applauded, although there was some apprehension lest, "his parents' wishes doomed to cross," he might be led astray from his professional pursuits; but when, encouraged by this approbation, he showed the poem to his comrades in the office at Nantwich, he was for ever cured of his poetical propensity, for it was received with inextinguishable laughter. Long did "Clwyd's

streams" resound in his ears, and a wicked wag reported that the original edition contained the couplet:—

" While *cheese* shall cheer the Cambro-Briton's sight,
And *cwru da** shall prove his chief delight."

Kenyon never rhymed more, and it is believed that he never afterwards read a line of poetry during his whole life, except the metrical translation of the Psalms of David when he was at church.

By his steadiness, intelligence, and uniform good conduct, he was deservedly a great favourite with his master, and he fondly hoped that, to crown his ambition, he might be taken into partnership by this topping practitioner, and eventually succeed him. A negotiation for this purpose was actually opened, but Tomkinson behaved ungenerously,—demanding either a large premium, which the Kenyons could not afford to pay,—or insisting on the young man being contented with a very small share of the profits, which would not have yielded him an income equal to that of a managing clerk.

It so happened that at this time his elder brother, then studying at St. John's College, Cambridge, died suddenly, and it was thought that Lloyd, now heir to the small family estate, might aspire to the superior grade of the profession of the law. He himself would still have been satisfied with settling on his own account as an attorney at Ruthin, Denbigh, or any neighbouring town, where he would have been sure of soon getting into reputable practice by his own merit and his respectable connections,—but he very submissively took the advice that was offered to him, and on the 7th day of November, 1750, he was admitted a student at the Middle

* "Good ale." The Welsh say that *cervisia* is derived from *cwru*.

Temple.* The master and clerk are said not to have met again after this separation, till Lord Kenyon was sitting at Nisi Prius one day at Westminster, and a deed was required to be proved. It so happened that Mr. Tomkinson, of Nantwich, the Chief Justice's old master, came forward as attesting witness. Being required to read the deed, which was in a rather cramped hand, he became very nervous, and Lord Kenyon was so much dissatisfied that he said, "Hand me the deed and I will read it." This he did fluently and then returned the deed to the witness, observing there was no difficulty in reading the deed. Tomkinson whispered to a friend, "No, not for him; he has been reading a deed of his own engrossing." Happy had it been for Kenyon's fame and for the dignified administration of justice, if he had now been sent to a university, where his manners might have been polished, his mind might have been liberalised, and he might have acquired the moderate portion of knowledge expected in an English gentleman.

He is admitted a student at the Middle Temple.

Surely before students are entered at the Inns of Court there should be a preliminary examination to know whether they have acquired the elements of a liberal education. Such a regulation could not be complained of, like the exclusion of all who could not produce a certificate from the Heralds' College of gentle birth. Leaving a free course to merit emerging from obscurity, it would guard the profession of the law from the

His misfortune in not being required to be initiated in liberal studies.

* "Die 7 Novembris 1750.

"Ma^r Lloyd Kenyon filius et hæres apparens Lloyd Kenyon de Gredington in comitatu Flint; in principalitate Walliæ armigeri admissus est in Societatem Medi^j Templi London specialiter.

"Et dat. pro fine . . . 4 0 0"

Examined copy from the books of the Middle Temple. In the Lives of Lord Kenyon hitherto published, it is said that his removal to London and entrance at the Middle Temple did not take place till 1755, although his printed Reports of Cases decided in the Courts of Chancery and King's Bench begin in 1753.

intrusion of those who bring discredit upon it by their ignorance, and would protect the administration of justice from being perverted by vulgar prejudices haunting the minds of those placed in high judicial stations. Kenyon, by a little preliminary training at this period of his life, might have been taught to correct or to suppress his bad Latin, and might have escaped the peril which tarnished his judicial reputation, when with furious zeal he thought he was serving the public by laying down for law that a merchant was guilty of a misdemeanor by purchasing commodities with the intent to sell them again at a profit.

But he was at once transferred from his desk in his master's office at Nantwich to a very small set of chambers on the fourth story in Brick Court, Middle Temple Lane. To the few books which he brought with him from the country, were now added Coke upon Littleton, Rolle's Abridgment, and Sheppard's Touchstone. But neither by the advice of others, nor spontaneously, did he become acquainted with any author qualified to enlarge his understanding or to refine his taste. He had no suspicion that his education had been defective, nor the slightest desire to take any knowledge except law for his province.

Not having a university degree, it was necessary, according to the regulations then in force, that he should be five years a student before he could be called to the bar. During this long period he gave proof of unwearied diligence and rigid self-denial. He pored over his law books day and night. Being once treated to the play, he declared sincerely that he found no pleasure in the performance, and it is said that he never was again within the walls of a theatre till, having reached the dignity of Chief Justice, he was prevailed upon to visit Drury Lane,

His exclusive attention to law.

His dislike of the theatre.

that he might see the famous melodrame PIZARRO,—when, falling asleep in the middle of the electrifying declamation against “avarice and ambition,” Sheridan, the mortified author, vengefully exclaimed, “Alas! poor man, he fancies himself on the bench.”

While yet a student at law, young Kenyon would indulge in the amusement of going to the office of Mr. Seckerson, an attorney, who was the town agent of his old master at Nantwich, reading the instructions for conducting pending suits, and seeing how business was prepared for the Courts at Westminster. By-and-bye he diligently attended these Courts himself, and took copious notes of the arguments at the bar and of the judgments. His notes he methodised in the evening into respectable reports, which afterwards were very useful to him, and of which two volumes, containing cases from 1753 to 1759, were published in the year 1819 by his sons. I cannot much praise the style of the reporter, for he was careless about grammar, and he had no notion of elegant composition; but he shows that he perfectly well understood the points which were discussed and decided.

His finances being very limited, he kept account books for many years containing entries of every single farthing which he expended. These are still preserved, and contain mysterious abbreviated items, which have given rise to much speculation and laughter, but I believe that they may be explained without the slightest slur being cast upon his very exemplary morals. Although the companions in whose society he chiefly delighted were those whom he met at Mr. Seckerson's, he made acquaintance in the Middle Temple Hall with some men who afterwards gained great distinction. Two of these were John Horne Tooke and Dunning, who were

He writes reports of decisions of the Courts.

He is acquainted with Horne Tooke and Dunning.

allied to him by penury as well as genius. "They used generally in vacation time to dine together at a small eating-house, near Chancery Lane, where their meal was supplied to them at the charge of 7½d. a-head." * Tooke, in giving an account of these repasts many years after, used to say, "Dunning and myself

His economical mode of dining.

were generous, for we gave the girl who waited on us a penny a-piece, but Kenyon, who always knew the value of money, rewarded her with a half-penny and sometimes with a *promise*." Kenyon, when elevated to the Bench, without owing to the manner in which he was supposed to have treated the maid, would very manfully point out the shop where he had been accustomed to dine so economically; yet it is said that he displayed evident signs of wounded pride when under a subpoena he was obliged in the Court of Common Pleas to prove the execution of a deed which he had attested while clerk to Mr. Temkinson, at Nantwich.

Having eaten the requisite number of dinners in the Middle Temple Hall, on the 7th of February, 1756, he was called to the bar. But for many years he remained poor and obscure. He had no captivating powers to bring him suddenly forward, and it is recorded to his honour that he never descended to any mean arts with a view to obtain business. For a long time he had absolutely nothing to do in Westminster Hall. He laid himself out for conveyancing, and his Welsh connections gave him a little start in this line. His father furnished him with a Welsh pony, on which he rode the North Welsh Circuit, picking up a few half-guineas. He likewise attended the assizes at Shrewsbury and one or two other towns on the Oxford Circuit; but these were only a source of expense to him, which he could very ill afford. His resolution, however, was

He is called to the bar.

* Steevens's Memoirs of Horne Tooke.

undaunted, and he felt that within him which assured him of ultimate success.

He never gained applause by any speech to a jury or even by any brilliant argument to the court; ^{His slow progress.} he was not only totally devoid of oratory, but he had no great power of reasoning; although he knew with intuitive quickness what was the right conclusion upon any legal question, he had not the art of showing how according to the rules of dialectics this conclusion was to be reached. After he had been ten years at the bar, it is said that he was desirous of quitting the profession of the law and taking orders, but that he could not obtain a presentation to the small living of Hanmer, in the county of Flint, to which he aspired.

His extraordinary merits as a lawyer were first discovered and developed, not by the public, nor by the judges, nor by the attorneys, but by a contemporary barrister. Dunning, instead of continuing to dine on cow-heel, shortly after being called to the bar was making thousands a year, and had obtained a seat in parliament. He had many more briefs than he could read, and many more cases than he could answer. Kenyon be- ^{He tags for Dunning.} came his *fag*, or in legal language his "devil,"—and thus began the career which led to the Chief Justice-ship. With most wonderful celerity he picked out the important facts and points of law which lay buried in immense masses of papers, and enabled the popular leader to conduct a cause almost without trouble as well as if he had been studying it for days together,—and many hundreds of opinions which Dunning had never read were copied from Kenyon's MS. by Dunning's clerk and signed by Dunning's hand. The only return which Kenyon received was a frank when writing to his relations, and this courtesy had once nearly led to a fatal quarrel between the two friends, for to the direction of a letter addressed to "Gredington, Flintshire,"

Dunning waggishly added, "North Wales, near Chester." This insult to the Principality stirred up the indignation of the fiery Welshman, who exclaimed, "Take back your frank, Sir—I shall never ask you for another:" and he was flying away in a towering passion, but was at last appeased.

It gradually oozed out in the profession that Dunning's opinions were written by Kenyon, and the attorneys thought they might as well go at once to the fountain-head, where they might have the same supply of pure law at much less cost. Cases with low fees came in vast numbers to Kenyon, and so industrious and ready was he that they were all answered in a day or two after they were left at his chambers. He thus became a very noted case-answerer, and his business in the Court of Chancery gradually increased. One serious obstacle which he had to surmount was the brevity with which he drew deeds as well as bills and answers, for the profits of the attorneys unfortunately being in proportion to the length of the papers which pass through their hands, they are inclined to employ the most lengthy, rather than the most skilful draughtsman. But Kenyon refused to introduce any unnecessary recital, avoided tautology as much as possible, and tried to make the language he employed approximate to that of common sense.

Still, however, he seemed destined to be eminent in his day only in that class of chamber-counsel who make a comfortable subsistence by their labour, and, like other tradesmen, are forgotten as soon as they die. Dunning, after having been a short time Solicitor-General, having resumed his stuff gown and gone into hopeless opposition, could not help him on, and without a powerful patron the honours of the profession were not within his reach.

He becomes
a great case-
answerer.

His merits as
a draughts-
man.

A.D. 1770.

But his fortune was made by the elevation of Thurlow to the woolsack. This man of extraordinary capacity and extraordinary idleness, when called to sit in the Court of Chancery ^{He sags for Lord Chancellor Thurlow.} earnestly desired to decide properly, and even coveted the reputation of a great judge, but would by no means submit to the drudgery necessary for gaining his object, and as soon as he threw off his great wig he mixed in convivial society or read a magazine. To look into the authorities cited before him in argument, and to prepare notes for his judgments, Hargrave, the learned editor of Coke upon Littleton, was employed, but he was so slow and dilatory that the lion in a rage was sometimes inclined to devour his jackal. Kenyon, sitting in court with a very moderate share of employment, having once or twice, as *amicus curiæ*, very opportunely referred him to a statute or a decision, was called in to assist him in private, and now the delighted Chancellor had in his service the quickest, instead of the most languid, of journeymen. He even took a personal liking for Kenyon, although in grasp of intellect, in literary acquirements, in habits of industry, in morals, and in every respect, a striking contrast to himself. Laughing at his country, calling him by no other name than *Taffy*, holding up to ridicule his peculiarities, but knowing him to be a consummate English lawyer, he resolved to reward him by raising him to the bench.

A legal dignity falling in, Serjeant Davenport, who had strong claims on the Government and ^{A.D. 1780.} had met with many prior disappointments, ^{He is made Chief Justice of Chester.} thus applied for it, thinking that by his laconic style he might adapt himself to Thurlow's humour; "The Chief Justiceship of Chester is vacant—am I to have it?" The reply was in the same taste: "No, by G—d! Kenyon shall have it."

On Kenyon it was spontaneously bestowed, to his infinite gratification, for it left him still his lucrative practice at the bar; and not only had he a handsome salary with his new office, but Flint, his native county, was within his jurisdiction, and in the presence of his schoolfellows he was to act the part of a Chief Justice.

CHAPTER XLII.

CONTINUATION OF THE LIFE OF LORD KENYON TILL HE WAS
APPOINTED MASTER OF THE ROLLS.

It has been said that we get on in the world more by receiving favours than by conferring them, and Thurlow was only incited by the snarling criticisms upon the appointment of the new Chief Justice of Chester to push on his *protégé* to higher elevation. Accordingly, on the dissolution of Parliament, which took place in the autumn of the year 1780, Thurlow negotiated Kenyon's return to the House of Commons for the now disfranchised borough of Hindon in the county of Wilts. There was a show of opposition at the election, and a petition was presented against the return, charging Mr. Kenyon with bribery. This called forth the only speech which he delivered, till, having long given silent votes, he had the extraordinary luck to be appointed attorney-general. A motion having been made to give precedence out of its turn to the committee to try the merits of the election for the city of Coventry, "Mr. Lloyd Kenyon said he stood in the predicament of a member petitioned against on the heavy charge of bribery—that his moral character was bleeding afresh every hour the trial of the petition against him was delayed—that, in obedience to the regulations of the House, he had submitted, on the principle of general convenience, to the day on which the committee to try the petition was fixed to be balloted for—that he had as much right to acceleration

He is introduced into Parliament.

23rd Jan. 1781.

His impatience to meet a charge of bribery.

and preference as another; and, if another was to be favoured, he should consider it an indication that hostilities were determined against him, and a grievous injury."

Kenyon's reputation was now very high as a lawyer. By his fee-books still extant, it appears that he made above 3000*l.* a year by answering cases. His opinions being clear, decisive, sound, and practical, gave great satisfaction, although he seldom assigned any reasons or cited any authorities. But he never acquired forensic reputation, and all that could be said for him as a counsel in court, was, that he had uniformly read his brief, and was prepared to battle with force, if not with elegance, all the points which could arise in the course of the cause. There are only two criminal trials in which he is stated ever to have been engaged.

He is counsel
for the de-
fendants in
the prosecu-
tion for
deposing
Lord Pigot.

A.D. 1779.

The first was the prosecution of Mr. Stratton and his associates for deposing Lord Pigot, the Governor of Madras. Along with Erskine and other juniors, he assisted Dunning, who led for the defendants; but he only cross-examined a witness, without addressing the jury, and when, after conviction, the judgment of the Court was prayed, he waived his right of speaking in mitigation of punishment.*

Feb. 1781.

Yet we are afterwards surprised all of a sudden to find him leading counsel in a very celebrated trial which required a display of the highest powers of eloquence. However paradoxical it may appear, the dry, technical lawyer, who could hardly construct a sentence of English grammatically, was very skilfully selected on this occasion.

Lord George Gordon was about to be tried for his life on a charge of high treason, because the mob which he headed while they strove tumultuously to present a petition to the House of Commons against

* 21 St. Tr. 1015.

Popery, had afterwards, when he had left them, committed dreadful outrages in the metropolis, for which many of the chief malefactors had been very properly hanged. There was a strong prejudice against him on account of his imprudent speeches, which had remotely, though unintentionally, led to such disastrous consequences, and it was generally expected that he would be found guilty. He and his friends placed their only hope upon Erskine, who had been lately called to the bar, and had shown powers as an advocate unexampled in our juridical annals. But who was to be the colleague of this extraordinary youth? The statute of William III., to regulate trials for high treason, allowed a full defence by two counsel. No one junior to Erskine could be trusted, and his efforts would have been controlled and cramped by a senior of any reputation. Kenyon was therefore fixed upon. He was known to be a consummate lawyer, it was believed he would do no harm, and he was expected to act as a foil to Erskine, who was to come after him, and was sure to make up for all his deficiencies.

How he came to be counsel with Erskine for Lord George Gordon.

Though at first strongly opposed, from the dread that the jury might definitively make up their minds before Erskine could be heard,—the hazardous plan was adopted, and it succeeded most admirably.

Kenyon, having practised at Quarter Sessions, had some notion of cross-examination, and he thus dealt rather smartly with a witness who had sworn to seeing a flag, with an exciting Protestant motto upon it, carried in the mob which the noble prisoner led on: Q. "Can you describe the dress of this man, who, you say, you saw carrying the flag?" A. "I cannot charge my memory; it was a dress not worth minding—a very common dress."—Q. "Had he his own hair, or a wig?" A. "If I

His successful cross-examination of a witness.

recollect right, he had black hair; shortish hair, I think.”—Q. “Was there anything remarkable about his hair?” A. “No; I do not remember anything remarkable; he was a coarse-looking man; he appeared to me like a brewer’s servant in his best clothes.”—Q. “How do you know a brewer’s servant in his best clothes from another man?” A. “It is out of my power to describe him better than I do. He appeared to me to be such.”—Q. “I ask you, by what means do you distinguish a brewer’s servant from another man?” A. “There is something in a brewer’s servant different from other men.”—Q. “Well, then, you can tell us how you distinguish a brewer’s servant from any other trade?” A. “I think a brewer’s servant’s breeches, clothes and stockings have something very distinguishing.”—Q. “Tell me what in his breeches and the cut of his coat and stockings it was by which you distinguished him?” A. “I cannot swear to any particular mark.” Thus, by a little bullying and browbeating, the witness was thrown into confusion; and although all that he swore about the flag was correctly true, his evidence was discredited.

But when Mr. Kenyon came to address the jury, he performed so miserably that the prosecution resembled an undefended cause, and poor

His miserable speech to the jury.

Lord George afterwards declared that “he gave himself up for lost.” To exhibit the most favourable specimen of this oration, I select the carefully premeditated *præmium* as it appears in the state trials, after being corrected by the orator:—

“Gentlemen of the Jury,—The counsel for the prosecution having stopped in this stage of the business, giving as a reason for not producing more witnesses, that they were afraid of tiring out the patience of the Court and the jury, it is the misfortune of the prisoner to make his defence at that period of the day when the attention of the Court and the jury must be, in some measure, exhausted. There are other difficulties which he also labours under; for upon this occasion, I, who am assigned by the

Court, to be one of his counsel, confess myself to be a person very little versed in the criminal courts; I never yet stood as a counsel for a person who had so great a stake put in hazard; and therefore, gentlemen, in addressing you for him, I stand as a person in very considerable agitation of mind for the consequences which may happen through my defects.

"When persons are accused of actions of great enormity, one is apt to look round about one to see what the motives were that could induce the parties so to act. The prisoner at the bar stands before you a member of one of the most considerable families in this country. At the time when this conduct is imputed to him, he was a member of the Legislature; he stood in a situation which he was not likely to better by throwing the country into convulsions. A person that stood in the situation he stood in could not make his prospect better than in seeing the affairs of the country conducted under legal government; and if he thought any inroads had been made upon those laws which the wisdom of our ancestors had enacted, it was his business to bring about a repeal of those laws, to redress those grievances, by proper legal means, and not by causing a revolt in this country. This being the case, and as his conduct may be imputed to good or bad motives, it seems reasonable, and humanity will induce you to impute it to proper rather than improper motives, the noble prisoner being, as I have said, a man standing in a situation who had everything to expect so long as law prevailed, but had nothing to expect when anarchy was substituted in the place of law.

"The crime imputed to the noble prisoner is, that he being a liege subject of the King, had levied war against the King. The crime is imputed to him under an Act of Parliament enacted for the wisest purpose, that crimes of this very enormous nature should not depend upon loose construction; but that men in their journey through life might, by looking upon the statute, see what the plan of their duty was, might see what the rocks were upon which they were not to run, and might see, in the plain words of the statute, what they were to do, and what to avoid. The Attorney-General has told you, very properly, that the crime which he meant to impute to him was not a crime against the person of the King, but that it was a constructive treason. Gentlemen, I have only to lament that there is such a phrase in the law as constructive treason. At the time when the law was enacted, I verily believe the Legislature had it not in their contemplation that the words constructive treason would find their way into the Courts at Westminster; but, however, so it seems the law is: for so it seems upon some certain occasions, Judges have decided."

He afterwards handled all the witnesses *seriatim* in the order in which they were called, reading their evidence from the notes on his brief, and making trivial comments upon them. At last he arrived at his peroration: "I know that I speak to men of character and station in the world, and of good sense, and who know that their duty is to do justice; and know at the same time that every favourable construction is to be made in behalf of the prisoner. That has always been the language of courts, and will be the language of this court this day."

If the trial had here concluded, the jury, without leaving the court, would inevitably have found a verdict of *guilty*; but Erskine followed and restored the fortune of the day. It was impossible for him, with a grave face, to praise the eloquence of the discourse which had just been delivered; but with the utmost courtesy and generosity he sought to cover the failure of his leader, complimenting him upon his powers of cross-examination, and dwelling particularly upon the "breeches of the brewer's servant." After a most masterly exposition of the law of high treason, he clearly proved that, even giving credit to all that had been sworn on behalf of the Crown, the prisoner had neither imagined the King's death, nor levied war, within the meaning of the statute of Edward III. by which treasons were defined. So there was a glorious acquittal.*

It should be related to Kenyon's credit that on this occasion he was entirely free from jealousy and envy, although so outshone. On the contrary, he felt nothing towards his junior but admiration and gratitude, which continued through life, notwithstanding their political differences—inasmuch that he would hardly believe the stories which were afterwards told

* 21 St. Tr. 485-652

of Erskine's immoralities; and when some things were related which could not be denied, he would exclaim, "Spots on the sun—only spots on the sun!"

Mr. Kenyon's subsequent forensic displays were confined to arguing in the Court of Chancery such matters as the construction of a will or exceptions to the Master's report. But we must now attend to him as a politician. In the House of Commons he steadily voted with Lord North's government till the critical division which put an end to it. On this occasion he absented himself on the plea of indisposition.*

Thurlow continuing, to the astonishment of all mankind, to hold the great seal under Lord Rockingham and the Whigs, now contrived to have his old "devil" Kenyon placed in the situation of Attorney-General. This appointment caused considerable discontent, for the law officers of the Crown had long been men of liberal acquirements and of great weight in the House of Commons. Undervaluing his own qualifications, Thurlow observed that the chief object in such an appointment was to have a sound lawyer, who could give good advice to the government, and that Kenyon was allowed on all hands to be more familiarly acquainted with every branch of the law than any of his competitors,—that the silence which he had hitherto observed in the House of Commons argued discretion,—and that his zealous official services henceforth would be found of high value. The objection that this favourite had been strenuous for carrying on the war with America and against conciliation could not be decently urged, as the patron was in the same predicament. So Lord North's Attorney-General Wallace was turned out, and Kenyon, who had copied his principles and his conduct, succeeded him—to the peculiar chagrin

8th March,
1782.
Kenyon At-
torney-Ge-
neral to the
Rockingham
administra-
tion.

* 22 Parl. Hist. 1208.

of Whig barristers and considerably to the detriment of the new Whig government. Dunning, become Lord Ashburton, Chancellor of the Duchy of Lancaster, and a member of Lord Rockingham's cabinet, was suspected, in spite of repeated denials, of favouring the elevation of a man of notoriously anti-Whiggish principles, in consideration of the valuable assistance formerly rendered to himself in answering cases and noting briefs.

The new Attorney-General was a little puzzled by some of the questions on international law which arose from the "armed neutrality" of the Northern powers, entered into with a view to encroach on our belligerent maritime rights; but by industry he got up pretty well the learning about blockades, contraband of war, and *free bottoms* making *free goods*, and on all subjects of municipal law he advised the government more promptly, more decisively, and more correctly than any law officer of the Crown had done for many years.

He first opened his mouth in the House of Commons, after being appointed Attorney-General, in an altercation with Mansfield, the late Solicitor-General, who in the debate on Lord Shelburne's measure for arming the people, had represented the volunteers in Ireland as having constituted themselves the government of the country, and although several times called to order, had insisted on going on in the same strain. At last "Mr. Attorney-General Kenyon expressed his surprise that his learned friend should have put the House under the necessity of calling him to order three different times, and as his speech had a dangerous tendency if persevered in, he must be called to order again." Mansfield declared himself hurt by the Attorney-General's speech, which he said could not be calculated for any good purpose, and no part of his past life would justify the imputation that he would intentionally make any observation

10th May.

His alterca-

tion with

Sir James

Mansfield.

which could be injurious to the country. *Kenyon*: "I did not speak in the most measured terms, because I saw my learned friend on the brink of a precipice, and I was eager to save him from falling." Mansfield declared himself quite satisfied with this explanation, and their friendship continued without abatement.*

Mr. Attorney-General, till ejected by the Coalition Ministry, spoke only on one subject—the recovering of balances due to the Exchequer from those who had held the office of Paymaster-General to the Forces; and here he displayed a zeal which was supposed to be a little heated by his desire to please the Chancellor, by his preference to the Shelburne section of the Cabinet, and by his antipathy to the family of Fox. He astonished the House by his observations on certain resolutions moved by Lord John Cavendish, the Chancellor of the Exchequer, which had for their object prospectively to put the Paymaster of the Forces and other public accountants on fixed salaries, and to prevent them from retaining any public money in their hands to be employed for their own profit. Mr. Attorney-General Kenyon said—

His zeal
against
public ac-
countants
explained.

18th June.

"He would not oppose the resolutions, but he would have it understood that he did not preclude himself in the smallest degree from a full right and liberty to discuss in a court of justice the question 'whether the public might not call upon the great servants of the public to account for the great emoluments they had made by means of the public money?' He spoke not from any ill will to any man alive, but solely from a sense of duty in an office which he had been unexpectedly, as he was undeservedly, called to fill. He did not know how long he might remain in it; but if he should be dismissed from it, he should return to much domestic happiness, which he had enjoyed before he was called into public life: but while he remained in it he was determined to do his duty."

Mr. Secretary Fox: "I cannot join with my learned friend, His Majesty's Attorney-General, in the observations he has

* 23 Parl. Hist. 9.

thrown out. I contend, as I have often done before, that when a balance of public money lies in the hands of a public accountant, all the public have a right to expect from him is, that whenever the money shall be called for, it shall be forthcoming. To future regulations on the subject I offer no objection. I wish that my learned friend would leave some room for prescription and draw some line beyond which his inquiry shall not go, otherwise it will be in the power of the King's Attorney-General to keep in constant alarm and the worst of slavery all those who have ever filled any public office and their descendants. It may happen that a public accountant may have acquired a great fortune by a fair and honourable use of public money, and his descendants may, by their folly and imprudence, have completely dissipated and destroyed it: are these descendants to be called upon to account for the profits made by their ancestor? Let the line be drawn, and I shall be satisfied."

June 25. Nevertheless, in the course of a few days, Mr. Attorney-General, disclaiming all personal motives, moved certain resolutions, which would have made Mr. Fox, who had not a shilling in the world, although now Secretary-of-State and aspiring to the Premiership, liable for interest on all the balances of public money which had ever been in his father's hands,—on the alleged ground that as the principal sums belonged to the public, the public was entitled to all the profit made of them,—observing that, although he now acted without communication or concert with any members of the government, he had consulted lawyers of high eminence in Westminster Hall, who unanimously agreed with him that the rule by which trustees were bound in a court of equity applied to public accountants.

Mr. Fox: "It might have been as well if my honourable and learned friend had consulted some members of the government before, as organ of the government, he moved these resolutions. He says that lawyers whom he has consulted are of opinion that the public have a right to claim all the profits of their own money in the hands of a public accountant. This may be law, but it does not appear to be common sense, and therefore I

suspect that it is not law, for the law of England and common sense are seldom at variance. The comparison between a public accountant and a trustee will not hold good. A guardian, for instance, having his ward's money in his hands, may and ought to put it in a state of lucration. If he vests it in the public funds, and they rapidly fall, the loss falls on the minor, not on the guardian. But what would be said, under similar circumstances, to a public accountant by the Treasury? 'We have nothing to do with your losses, you must bear them yourself—it was not by our direction that you put out the public money to interest.' To call for interest from a public accountant would be to justify him in placing the public money out at interest, and to make the public liable for the losses which might ensue."

Mr. Wallace, the ex-Attorney-General, said that whatever others in Westminster Hall might think, he felt no difficulty in declaring that the public had no such right, and he believed that he should not be found singular among the gentlemen of the long robe. It was a clear maxim in law that whatever party received the profit, the same party ought to bear such losses as the property sustained; but all were agreed that the public had nothing to do with any loss arising from the use of public money, and that a public accountant being liable for the whole of his balances, the last shilling of his property, and his liberty too, must answer for any deficiency.

The Attorney-General took fire at the idea of imputing to him any thoughts of personality or malevolence in his conduct on that day; he hoped the gentleman did not look into his own heart to find out the motives by which he was actuated that day.

Some of the Attorney-General's resolutions were withdrawn and the others were negatived.*

On the death of Lord Rockingham and the resignation of the Foxite Whigs, Kenyon continued in office under Lord Shelburne, but took no part in the debates on the treaty of peace, or on

1st July.
He adheres
to Lord
Shelburne.

* 23 Parl. Hist. 115-134.

any other subject during this administration. The
A.D. 1783.
18th June.
He is turned
out by the
"Coalition." "COALITION" having stormed the Royal closet
 he was replaced by his rival Mr. Wallace, and
 he enlisted himself under Mr. Pitt, without
 adopting any of the liberal principles which
 illustrated the early career of this most distinguished
 statesman.

The ex-Attorney-General led the opposition to the
 first measure of the new Government—a Bill to
 facilitate the collection of the malt duties—and he
 acted as teller on the division, but found himself in a
 minority of 47 to 12.*

June 23.
His parlia-
mentary
conduct
while in
opposition. He returned to the attack upon Mr. Fox by asking a
 question of the government, "whether there
 was any intention of reviving a Bill which
 he had filed in the Exchequer against Mr.
 Powell, the executor of the late Lord Holland,
 and which had abated by the death of that
 gentleman?" The Solicitor-General said, "he hoped
 the Bill would never be revived to the full extent of
 that which had abated—which was for the recovery of
 all the profits which had ever been made from the use
 of public money by the late Lord Holland—a measure
 which appeared to him so unjust, vexatious, and op-
 pressive—so contrary to the received practice of all
 Paymasters for a century, and which would lay under
 such terrible apprehensions the descendants of all
 former Paymasters, without any limitation as to time,
 that he would sooner resign his office than concur in
 such an abuse of the supposed prerogative of the
 Crown." Mr. Fox complained that "of all the former
 Paymasters, his father was the only one whom the late
 Attorney-General had singled out for the purpose of
 exacting from his executors what would reduce the
 whole family to beggary. This was a *prosecution* which,

* 23 Parl. Hist. 1028.

considering the situation in which he stood when it was commenced, looked very like a *persecution*." Mr. Pitt, much ashamed of what had been attempted, said, "he did not himself think that such a demand should be made by the public; but if the demand was legal, though oppressive, his learned friend was justified in enforcing the law, leaving it to the legislature to give relief." *Mr. Burke*: "Then Empson and Dudley, who were properly hanged, might have been justified on precisely the same ground."*

When a Bill for reforming the abuses of the Exchequer was passing through the House of Commons, the ex-Attorney-General showed his gratitude to Lord Thurlow by supporting a clause by which the tellership of that noble Lord should be exempted from its operation, on the ground that although there had been no bargain on the subject when he accepted the great seal, which would have been very dishonourable, there had been an expectation and an understanding which ought to be respected. Lord North said, "this was what the French called '*unir les plaisirs du vice au mérite de la vertu*,'" and the clause was rejected.†

In the debate respecting amending the Receipt-Tax, Mr. Sheridan made the House very merry by referring to an opinion of the ex-Attorney-General on the subject, which had been published in all the newspapers along with another, signed OLIVER QUID.

Mr. Kenyon: "I did write the opinion which the honourable gentleman has alluded to in the regular course of my professional practice, not for the purpose of obstructing the collection of the Receipt-Tax or annoying the government. I believe it is sound, and I abide by it. By putting the opinion of a professional lawyer and that of OLIVER QUID on the same footing, the honourable gentleman has lowered himself and not me. With

* 23 Parl. Hist. 1060.

† Ib. 1090-91.

regard to its appearance in the newspapers, I am proud to say that I have no connection with them. I never wrote paragraphs for them, nor paid news writers for the rubbish which they contain. I am not solicitous for newspaper fame, nor are any of the prints of the metropolis retained in my service, although they all may be in the service of others.”*

This speech is said to have been “very tartly delivered,” and it certainly shows great boldness, considering the withering retaliation to which he exposed himself.

When the announcement was made that the Coalition Ministry, equally odious to the King and the nation, had been dismissed, Mr. Kenyon naturally expressed his exultation, and a question having been put whether Mr. Pitt, the new Premier, would dissolve Parliament, he said, very properly, “I am not in the secrets of those who are just gone out, or of those who are coming in, and therefore I do not know what measures are likely to be adopted. But this I know, that the power of dissolving Parliament is in the Crown alone, and that this House has no constitutional right to prolong its existence by its own authority.”† As soon as Mr. Pitt had filled up the higher offices of the government, Mr. Kenyon again succeeded Mr. Wallace as Attorney-General.

In this capacity he only once more came forward, and that was in the discharge of “the duty he had sworn to perform”—compelling the payment of Paymaster’s balances. The object of his attack now was Mr. Rigby, who had long been Paymaster under Lord North, and had rendered himself highly obnoxious by siding with the Coalition. Without any notice to him whatever, a motion was abruptly made “That the Right Hon. Richard Rigby, late Paymaster-

19th Dec.
Dismissal of
the “Coalition
Ministry.”

Dec. 26.
Kenyon
again Attorney-
General.
Feb. 1784.
He renews
his attack
on public ac-
countants.

* 23 Parl. Hist. 1222.

† 24 Parl. Hist. 234.

General of the Forces, do deliver to the House an account of the balance of all public money remaining in his hands on the 13th day of November last." Rigby complained bitterly that "the proceeding was contrary to all practice. The want of civility did not surprise him, as such a thing he had no right to expect from the learned gentleman. He appealed to the House whether even common decency had been observed in bringing forward in such a manner a question so very personal."

The Attorney-General excused the want of notice by his having come down to the House so late, and again dwelt upon the sacred duty cast upon him when he took the oath of office, as Attorney-General, to watch over the rights of the Crown:—

Mr. Rigby: "I will leave the House to judge of the learned gentleman's candour and his motives. I might ask if any individual ever experienced such treatment from an Attorney-General. The obligation of his oath is his excuse. But this prodigious obligation only operates against his political opponents; and a very different interpretation was put upon the Attorney-General's oath of office by his predecessors, Lord Camden, Lord Thurlow, Lord Loughborough, and Mr. Wallace, who really were honourable men."*

Kenyon had all this time retained the office of Chief Justice of Chester, and twice a year travelled the North Welsh circuit as a Judge.

At the Great Sessions, held at Wrexham, for the county of Denbigh, in September, 1783, the celebrated case stood for trial before him of *The King v. the Rev. William Shipley, Dean of St. Asaph*, which was an indictment for publishing the "Dialogue between a Scholar and a Farmer," written by Sir William Jones. Erskine came special as counsel for the defendant, and, an acquittal being anticipated, a motion was made to put off the trial on pretence that some one

His conduct as Chief Justice of Chester, in the Dean of St. Asaph's case.

* 2: Parl. Hist. 672.

unconnected with the defendant had published a pamphlet, and distributed it in Wales, inculcating the doctrine that the jury, in cases of libel, are judges of the law as well as of the fact, and may return a verdict of *not guilty*, although the act of publication was proved, if they should be of opinion that the alleged libel contains nothing libellous. Erskine very indignantly resisted the application, but was overruled by the Chief Justice. The Dean of St. Asaph made an affidavit, showing that the supposed libel, which was a very harmless explanation of the principles of representative government, had been written by Sir William Jones, lately appointed an Indian Judge, and that the prosecution was maliciously instituted by an individual after the government, by the advice of the Attorney and Solicitor-Generals (Mr. Wallace* and Mr. Lee), had refused to prosecute, and that he himself was not in any degree privy to the circulation of the pamphlet respecting the rights of juries. This affidavit being read and commented upon by counsel, the defendant himself interposed, and earnestly implored that he might be allowed then to take his trial:—

Kenyon, C. J.: “*Modus in rebus*†—there must be an end of things.”

Dean of St. Asaph: “Think, my Lord, of the anxiety I have suffered and the expense I am put to. Let me stand or fall by the decision of this jury: let me, if innocent, once more stand up as an honest injured man; if guilty, let me be dragged to a dungeon.”

Kenyon, C. J.: “When the jury have given their verdict, if they find you *guilty*, the Court will then consider what judgment to pass.”

Dean of St. Asaph: “My Lord, in God’s name let me have a

* The Chief Justice professed great respect for Mr. Wallace, with whom he had several times exchanged the office of Attorney-General, but was highly offended by his opinion being stated that

the “Dialogue” was not a libel.

† This classical quotation his Lordship was in the habit of introducing when he thought it was full time to put an end to any discussion.

verdict one way or the other. Don't let me be kept longer in suspense."

Kenyon, C. J.: "I desire that after I have given the judgment of the Court, that judgment may not be talked about; I have given it upon my oath, and I am answerable to my country for it. I have been before reminded that these things are not passing in a corner, but in the open face of the world. If I have done amiss, let the wrath and indignation of parliament be brought out against me; let me be impeached. I am ready to meet the storm whenever it comes, having at least one protection—the consciousness that I am right. In protection of the dignity of the Court, I do the best thing I can do for the public; for if my conduct here is extra-judicially arraigned, the administration of justice is arraigned and affronted, and that no man living shall do with impunity."

So the trial was postponed,—and when the case was entered again at the Great Sessions in April, 1784, Erskine a second time attending as special counsel for the defendant, it was removed by *certiorari*, and it came on before Judge Buller at the Shrewsbury Assizes in August of the same year—when the ever-memorable struggle took place between Erskine and Mr. Justice Buller.*

* 21 St. Tr. 847.

CHAPTER XLIII.

CONTINUATION OF THE LIFE OF LORD KENYON TILL HE WAS
APPOINTED CHIEF JUSTICE OF THE KING'S BENCH.

In the spring of 1784 died Sir Thomas Sewell, who had been many years Master of the Rolls, and Mr.


Kenyon is made Master of the Rolls. Kenyon claimed the vacant office, which was conceded to him. He rather wished to have withdrawn from Parliament altogether, feeling that he was unfit for it; but, luckily for him, the Secretary for the Treasury insisted upon his finding himself a seat, that he might swell the ministerial majority expected in the new House of Commons. As yet Mr. Pitt had no high opinion of him, and had reluctantly agreed to his being restored to his office of Attorney-General and to his promotion to be Master of the Rolls. But he was endeared to the Premier by his services connected with the Westminster election.

Kenyon fulfilled his engagement with the government by purchasing his return for the borough of Tregony, and he could not have been blamed if, thinking little more of politics, he had simply attended to vote when he received the Treasury circular; but being compelled to disburse a large sum for his seat, he declared (in American phrase) that "he was resolved to go the whole hog." He therefore became a most zealous partisan, and strove to make himself conspicuous as a supporter of the government. His influence was now great among his countrymen in Wales, and he was able to procure votes for the ministerial candidate in several counties and boroughs within the limits of his juris-

diction as Chief Justice of Chester. These services, however, were little noticed, compared with those which he rendered in the election for the city of Westminster. The grand object was, that Mr. Fox might appear to be rejected by his former constituents, and that the disgrace should be heaped upon him of being turned out by a man so obscure and ridiculous as Sir Cecil Wray. His Honour, the new Master of the Rolls, now occupied a house in Lincoln's Inn Fields, beyond the limits of the city and liberties of Westminster; but his stables behind the house were in the parish of St. Clement Danes, within the "Liberties," and for these he was rated and paid *scot and lot*. But, unfortunately, he could not as yet be said to be an *inhabitant* of the city or liberties. To get over this difficulty, he had a bed fitted up in the hay-loft over his stables; His vote in the Westminster election. there he slept several nights, and then he went to the poll, and gave a plumper for Cecil Wray.

Such a proceeding might be justified or excused, but I am sorry to be obliged to condemn, in unqualified terms, the advice which he gave The bad advice he gave respecting the "Scrutiny." respecting the "Scrutiny." This proceeding brought great and deserved obloquy upon the Prime Minister, whose character was yet so fair, and Kenyon's support of it was reprobated even by one of the most zealous and able lawyers on the ministerial side.

After the election had lasted forty days, Mr. Fox had a considerable majority over Sir Cecil Wray; but, at the return of the writ, the High Bailiff, instead of returning him with Lord Hood, who was at the head of the poll, corruptly granted a scrutiny, and stated, in answer to the mandate requiring him to return two citizens to serve for the city of Westminster, that "he should proceed with the scrutiny as expeditiously as



possible." According to the rate at which it was advancing, the calculation was that it could hardly finish before the end of the Parliament, and that it would involve Mr. Fox in an expense of 20,000*l*. Several motions were made in the House of Commons, that the High Bailiff should be ordered to make an immediate return. In opposing these the Master of the Rolls took the lead, and he contended "that the scrutiny was perfectly legal; that it might be continued after the return of the writ; that the High Bailiff could not properly make a return till he had satisfied his conscience which of the two candidates had the majority of good votes; that he ought to have the requisite time for this purpose, and that to force him to make an immediate return would be contrary to the maxim of justice, never to be forgotten—*audi alteram partem*." His Honour likewise mixed up his juridical argument with bitter invectives against the "Coalition," citing several passages from Mr. Fox's speeches during the American war, in which he had asserted that Lord North ought to be impeached and punished.

Mr. John Scott (afterwards Lord Eldon), although a warm admirer and generally a steady supporter of Mr. Pitt, took a totally different view of the subject, and contended that both by common law and statute law the election must be finally closed before the return of the writ, so that the subsequent scrutiny was unlawful. Said he:—

Honourable
conduct of
Lord Eldon
on this
occasion.

"A very unnecessary tenderness is shown for the conscience of the High Bailiff. There will be no torture administered to it by compelling him to make a return before he has finished his scrutiny, for his oath only binds him to act according to the best of his judgment, and to return the candidate that has the majority of admitted votes. I confess I do not like that conscience in returning officers, under colour of which they may prevent the meeting of parliament for ever, or at least present the nation with the rump of a parliament on the day when the representatives of the whole nation ought to assemble."

Mr. Fox, in characterising his opponents, when he came to the Master of the Rolls, said :—

Mr. Fox's
censure of
the Master
of the Rolls.

"A third person there is whom I might in reason challenge upon this occasion—a person of a solemn demeanour, who with great diligence and exertion in a very respectable and learned profession has raised himself to considerable eminence—a person who fills one of the first seats of justice in this kingdom, and who has long discharged the functions of a judge in an inferior sphere.* This person has made a great parade of the impartiality with which he should discharge his judicial conscience as a member of Parliament in my cause. Yet this very person, insensible to the rank he maintains or should maintain in this country, abandoning the gravity of his character as a member of the senate, and losing sight of the sanctity of his station both in this House and out of it, in the very act of passing sentence, is whirled about in the vortex of politics and descends to minute and mean allusions to former party squabbles. He comes here stored with the intrigues of past times, and instead of uttering the venerable language of a great magistrate, he attempts to entertain the House by quoting or by misquoting words supposed to have been spoken by me in the heat of former debates, and in the violence of contending factions. Not only does he repeat what he supposes I said when my noble friend and I were opposed to each other, but he goes still farther back, and to prove that I should now be prevented from taking my seat for Westminster, reminds the House that when I first sat here as representative for Midhurst, I had not reached the full age of twenty-one years. Might I not, then, fairly protest against such a man and men like him sitting in judgment upon me?"

In reference to Mr. Scott's speech, Mr. Fox said :—

"One learned gentleman, a political opponent, has shown that he has both honour and intelligence. He has entered into the whole of the case with a soundness of argument and a depth and closeness of reasoning that perhaps have scarcely been equalled in the discussion of any juridical question within these walls."†

Lord Eldon, when in extreme old age, observed :—

"Fox never said an uncivil thing to me during the whole time I sat in the House of Commons, and I'll tell you to what I attribute that. When the legality of the conduct of the High Bailiff of Westminster was before the House, all the lawyers on

* Chief Justice of Chester.

† 24 Parl. Hist. 808-840; 25 Parl. Hist. 1-146.

the ministerial side defended the right to grant the scrutiny. I thought their law bad, and I told them so. I asked Kenyon how he could answer *this*—that every writ and commission must be returned on the day on which it is made returnable? He could not answer it. Fox afterwards came to me privately and said something very civil and obliging."

The Master of the Rolls was rewarded for his self-sacrifice by a Baronetcy, but he was made the subject of many cutting jests. The "Rolliad" coming out soon after, the work was dedicated "To Sir Lloyd Kenyon, Bart., Master of the Rolls," and in the title-page was exhibited, as the supposed crest of the family of Rolle, "a half-length of the Master of the Rolls, like a lion, demi-rampant, with a roll of parchment, instead of a pheon's head, between his paws,"—thus celebrated :—

Kenyon is
made a
Baronet.

Sir Lloyd
Kenyon and
the Rolliad.

"Behold th' engraver's mimic labours trace
The sober image of that sapient face:
See him in each peculiar charm exact,
Below dilate it, and above contract;
For Nature thus inverting her design,
From vulgar ovals has distinguished thine:
See him each nicer character supply—
The pert no-meaning pucker round the eye;
The mouth in plaits precise, demurely clos'd;
Each ordered feature and each line composed;
Where Wisdom sits a-squat, in starch disguise,
Like Dulness couch'd, to catch us by surprise.
And now he spreads around thy pomp of wig,
In owl-like pride of legal honours big;
That wig which once of curl on curl profuse,
In well kept buckle stiff and smugly spruce,
Decked the plain pleader; then in nobler taste
With well-frizz'd bush the Attorney-General graced,
And widely waving now with ampler flow,
Still with thy titles and thy fame shall grow.
Behold, Sir Lloyd; and while with fond delight
The dear resemblance feasts thy partial sight,
Smile if thou canst, and, smiling on this book,
Cast the glad omen of one favouring look."

"You, Sir Lloyd," said the dedication, "have ever been reputed the immediate author of the scrutiny. Your opinion is said to have been privately consulted

on the framing of the return ; and your public defence of the High Bailiff's proceeding notoriously furnished Mr. Rolle, and the other friends of the Minister, with all the little argument which they advanced against the objected exigency of the writ. You taught them to reverence that holy thing, the conscience of a returning-officer, above all law, precedent, analogy, public expediency, and the popular right of representation, to which our fathers erroneously paid religious respect." Then, after a long banter in prose upon his Honour for having slept in his stables and voted as the representative of his horses, this poetic effusion follows :—

"How shall the neighing kind thy deeds requite,
Great YAHOO champion of the HOUTHNNM's right?
In grateful memory may thy dock-tail pair
Unharm'd convey thee with sure-footed care;
O! may they, gently pacing o'er the stones,
With no rude shock annoy thy batter'd bones,
Crush thy judicial caulflow'r, and down
Shower the mix'd lard and powder o'er thy gown;
Or in unseemly wrinkles crush that band,
Fair work of fairer LADY KENYON's hand.
No!—may the pious brutes with measured swing
Assist the friendly motion of the spring,
While golden dreams of perquisites and fees
Employ thee, slumbering o'er thine own decrees!
But when a statesman in St. Stephen's walls
Thy country claims thee, and the Treasury calls
To pour thy splendid bile in bitter tide
On hardened sinners who with Fox divide,
Then may they, rattling on in jumbling trot,
With rage and jolting make thee doubly hot,
Fire thy Welsh blood, inflamed with zeal and leeks,
And kindle the red terrors of thy cheeks,
Till all thy gathered wrath in furious fit
On Rigby bursts—unless he votes with Pitt."

Mr. Fox being at last seated for Westminster, and having recovered heavy damages in an action against the High Bailiff for having granted and so long continued the scrutiny, at the end of the Rolliad there is a supposed letter to this corrupt functionary from Sir Lloyd Kenyon, apologising for not paying these damages on

Letter from
Sir Lloyd
Kenyon to
the High
Bailiff of
West-
minster.

account of his poverty, and particularly alluding to a story generally circulated, that he went to Court in a second-hand suit of clothes, bought by him from Lord Stormont's *valet de chambre*. The whole composition is very pungent, but I can only extract a few sentences from it:

"The long and short of the matter is, that I am *wretched poor*—wretchedly so I do assure you in every sense and signification of the word. I have long borne the profitless incumbrance of nominal and ideal wealth. My income has been cruelly estimated at seven, or as some will have it, eight thousand pounds per annum. I shall save myself the mortification of denying that I am rich, and refer you to the constant habits and whole tenor of my life. The proof to my friends is easy. My tailor's bill for the last fifteen years is a record of the most indisputable authority. Malicious souls may direct you, perhaps, to Lord Stormont's *valet de chambre*, and vouch the anecdote that on the day when I kissed hands for my appointment to the office of Attorney-General, I appeared in a laced waistcoat that once belonged to his master. I *bought* the waistcoat, but despise the insinuation; nor is this the only instance in which I am obliged to diminish my wants and apportion them to my very limited means. Lady K—— will be my witness that until my last appointment I was an utter stranger to the luxury of a pocket handkerchief."

"You are possessed of the circumstances which render any immediate assistance on my part wholly out of the question. But better times may soon arrive, and I will not fail you then. The present Chief Justice of the King's Bench cannot long retain his situation, and I will now reveal to you a great secret in the last arrangement of judicial offices. Know, then, that Sir Elijah Impey is the man fixed upon to preside in the chief seat of criminal and civil jurisprudence. I am to succeed him in Bengal, and then we may set the malice of juries at defiance. If they had given Fox as many diamonds by their verdict as they have pounds, rest assured that I am not a person likely to fail you after I shall have been there a little while, either through want of faith or want of means. Set your mind, therefore, at ease. As to the money, why if Pitt is determined to have nothing to do with it, and if nobody will pay it, I think the

* I have heard Jekyll assert that "Lord Kenyon never used a pocket-handkerchief in his life till he found one in the pocket of this very waistcoat,—which pocket-handkerchief he ought to have returned, as it was not included in the bargain for the waistcoat."

most advisable thing in your circumstances will be to pay it yourself. The contents of this letter will prove that I mean to reimburse you when I am able. For the present, nobody knows better than yourself, not even Lady K——, how ill matters stand with me, and that I find it utterly impossible to obey the dictates of my feelings.

“Your very affectionate friend

“And humble servant,

“*Lincoln's Inn Fields, June 20, 1786.*”

“L. K.

Sir Lloyd's efforts connected with the Westminster scrutiny brought him into such trouble and discredit that he wisely resolved wholly to renounce politics and to stick to his judicial duties. For these he felt he was well qualified, whereas he declared that “legislation was a task to which he by no means thought himself equal.” Accordingly, although he retained his seat in the House of Commons

A.D. 1786.

several years longer, he generally contented himself with a silent vote. However, he strenuously opposed a Bill for taking away the jurisdiction of the Ecclesiastical Courts in cases of defamation, which had been productive of much oppression to individuals and scandal to the Church, and when asked to regulate, if he would not abolish, these proceedings, he said “he would not presume to blurt out his crude ideas of legislation, lest they should fail of success.”*

A.D. 1787.

The last time of his addressing the House of Commons was in support of Sir Elijah Impey, but he rather damaged the defence by his intemperance, and gave Mr. Burke and Mr. Francis a triumph over him.†

Feb. 7, 1788.

Let us now attend him to the Rolls, where he appeared to much greater advantage. Being unable to read a single page of the Pandects, and being wholly unacquainted with the Roman civil law, even through the medium of trans-

Kenyon as
an Equity
Judge.

* 25 Parl. Hist. 1384, 1403; 26 Parl. Hist. 1004-5-8.

† Ib. 1422-4

lations and commentaries, he cannot be said to have been a great equity judge, but he was most familiarly acquainted with the practice and the doctrines of the Court of Chancery, he took very great pains with every case that came before him, and he despatched business with celerity and precision. He never seems to have written his judgments, and they cannot be praised for method, but they were very clear and generally very sound.

The reporters are Brown* and Cox,† and from them I extract a few of the most favourable specimens of his manner as Master of the Rolls. The question arose whether there ought to be a decree for the dissolution of a partnership, where one of the partners was so far disordered in his mind as to be incapable of conducting the partnership business according to the terms of the articles of co-partnership, although he could not be considered *non compos mentis*. As soon as the hearing of the cause was concluded, his Honour, without carrying the papers home with him or taking time to consider, spoke as follows:—

“This point is a new one, and if I conceived any industry of mine would throw any light upon the subject, I would take time to consider of my opinion, but as I do not know of any authority to guide me, and as I have made up my mind as to what I ought to do, I shall give my sentiments now. I think it may be laid down that where partners are to contribute skill and industry as well as capital, if one partner becomes unable to contribute that skill, a court of equity ought to interfere for both their sakes; for both have stakes in the partnership, and are interested in having it carried on properly, and the Court ought to see that the property of the party unable to take care of himself should be taken care of for him. It appears that few people care to leave the management of their property to other persons; and as a lunatic has no power of managing his own property, so a court of equity will not deliver it to persons to whom the party himself has not committed it. If therefore this

* Brown's Rep. vols. i. and ii.

† Cox's Cases, vols. i. and ii.

gentleman continues in the same state of derangement in which he has been, I should have no difficulty in saying that the partnership ought to be dissolved, though there may be no precedent for the purpose. If, as is alleged, he has clearly recovered his senses and there is no danger of a relapse, it would be too much to dissolve the partnership. Everybody knows that it is very frequent for persons once mad not to recover. I must therefore direct a new kind of inquiry, 'Whether Bennet is now in such a state of mind as to be able to conduct the business according to the articles of copartnership;' for if he has merely a ray of intellect, I ought not to reingraft him in his partnership, and that in mercy to both, for the property of both is concerned, and he who cannot dispose of his property by law, must be restrained."*

Persons entitled to an estate under a will upon the contingency of James Baron dying without lawful issue, applied for a writ *de ventre inspiciendo*, under these circumstances. He had married his servant maid, who in three weeks after the marriage was delivered of a dead child, and he dying soon after, she alleged herself to be again pregnant, whereas there was great reason to believe that she intended to palm a supposititious child upon the world for the purpose of defeating the remainderman. Objection was made that the writ could only be granted to persons claiming by descent.

Master of the Rolls: "At the time when the writ was first framed, which was coeval with the common law, the nature of the claim now made could not possibly exist; there was no disposition by will. Therefore land could only be claimed by descent. But the language of the writ may be varied according to the exigency of the case. Now what is the exigency of this case?—that the persons entitled to the property should not be defeated by a supposititious child. Desinherison or *exheredatio* is not confined strictly to an heir. When there is *eadem ratio* there ought to be *eadem lex*. The question is, whether there be in this case circumstances sufficient to warrant me in granting the order? The situation and conduct of the wife may well alarm the parties interested. She was brought to bed in less than three weeks after the marriage, and doubts arising when

* *Sayer v. Bennet*, 1 Cox, 107.

soon after upon her husband's death she declared herself pregnant, she did not take proper measures to remove these doubts—which she should have done, if it were only for the sake of the child. I therefore clearly think that the writ should issue.”*

In *Halfhide v. Fenning* Sir Lloyd Kenyon pronounced a judgment which has been often overruled, but which I humbly apprehend rests on just principles. To a Bill for an account between partners, the defendant pleaded that by the articles of partnership it was stipulated that any disputes arising between them respecting matters of account should be referred to arbitration.

Q. How far a covenant to refer to arbitration may be pleaded in bar to a suit or action?

Master of the Rolls: “There can be no doubt but that parties entering into an agreement that all disputes shall be referred to arbitration, are bound by such agreement. The Legislature has countenanced arbitrations by enacting facilities to enforce the performance of awards. Where a cause is referred by rule of the Court of King's Bench, with a clause that no Bill in Equity shall be filed, that Court, considering this clause legal, grants an attachment for the violation of it. Such references are very advantageous to the parties, as arbitrators are more competent to the settling of complicated accounts than the officers of courts of law or equity. I ought to be convinced that arbitrators cannot or will not proceed before I entertain jurisdiction of the matter. I am satisfied that in the first instance recourse ought to be to those judges pointed out by the articles. If they cannot determine the controversy, they will remit it to this Court.”†

Sir Lloyd Kenyon's merits as an Equity Judge.

Although we shall in vain look in his judgments at the Rolls for such masterly expositions of the principles of equity as delight us in those of his successor, Sir William Grant,

* Ex parte Bellett, 1 Cox, 297.

† 2 Brown, 336. The maxim that courts of law and equity are not to be ousted of their jurisdiction by the agreement of the parties arose at a time when the profits of judges depended almost entirely upon the number of suits tried before them. This mode of remuneration accounts for the decisions whereby the statutes made to discourage

frivolous actions by depriving the plaintiffs of costs were long rendered abortive. —December, 1849.

I am glad to think that by judgments of the Court of Queen's Bench, and of the House of Lords, in which I took a part, the right of parties to provide for the settlement of their disputes by arbitration is now fully established. —January, 1857.

and there were several of his decrees reversed, he despatched a great deal of business in a very creditable manner. Lord Eldon afterwards said to his son, "I am mistaken if, after I am gone, the Chancery Records do not prove that if I decided more than any of my predecessors in the same period of time, Sir Lloyd Kenyon beat us all." This compliment to Sir Lloyd Kenyon is well deserved, although the condition on which it is awarded cannot be affirmed, as Lord Eldon himself, in finally disposing of causes, was one of the slowest as well as one of the surest Judges who ever sat upon the bench.

The distinguished Welshman was now to exhibit his judicial powers on a wider stage. Lord Mansfield having presided thirty years as ^{Resignation of Lord Mansfield.} Chief Justice of the Court of King's Bench, was disabled by age and infirmity from longer doing the duties of his office, and he anxiously desired that Mr. Justice Buller should be appointed his successor. He intimated his willingness to resign if this arrangement should be acquiesced in. But it is said that the Prime Minister, when at the bar and going the Western Circuit, although Buller, the Judge of Assize, was very civil to him, had been much scandalized by observing his Lordship's demeanour in trying a great *Quo Warranto* case, which involved the right to return members of Parliament for a Cornish borough, contested by his family; and it is certainly known that Mr. Pitt not only had a good opinion of Sir Lloyd Kenyon's moral qualities, but felt deep gratitude for the sacrifices that his Honour had made in qualifying himself to vote for Sir Cecil Wray by sleeping in his own stables, and in zealously defending the "Scrutiny." Lord Mansfield was therefore told that the Master of the Rolls would be recommended to the King as Chief Justice. The notion was particularly disagreeable to the aged peer.

He not only sincerely believed that his favourite was much better qualified, but he had been told that the rival candidate had sneered at some recent decisions of the King's Bench which tended to bring about a fusion of law and equity, and that he was accustomed, like the Sergeants celebrated by Pope, to

"Shake his head at Murray as a wit."

For two years, while shut up in his villa at Caen Wood, Lord Mansfield retained his office of Chief Justice, in the hopes that Buller's growing popularity, while *de facto* presiding as the first common law Judge in Westminster Hall, might bear down all opposition, or that there might be a change of ministry,—when his superior merit might be acknowledged and rewarded.

At last hints were thrown out that this retention of the office was an abuse of the statute which made judges irremovable, and that the power of removing, reserved to the Crown on an address of the two Houses of Parliament, might be put in force for incapacity as well as for criminality.

Accordingly, on the 4th day of June, 1788, Lord Mansfield signed his resignation, and on the 9th of the same month, being the last day of Trinity Term, 1788, Sir Lloyd Kenyon was sworn in as his successor. On the same day the new Chief Justice, by letters patent under the Great Seal, was created Baron Kenyon of Gredington, in the county of Flint. He sat at *nisi prius* immediately after, but he was not formally installed till the first day of the following Michaelmas Term.

Sir Lloyd
Kenyon
appointed
his suc-
cessor, and
raised to
the peerage.
7th Nov.

CHAPTER XLIV.

LORD KENYON AS CHIEF JUSTICE OF THE KING'S BENCH.

ALTHOUGH Lord Kenyon afterwards acquired the full respect both of the legal profession and of the public, his promotion was in the first instance much disrelished. The gibes of the Rolliad circulated in society; he had offended several barristers by his hasty and uncourteous manner, and there was an illiberal apprehension that, because he had practised while at the bar in a court of equity, he must be unfit to preside in a court of law. Buller, on the contrary, was not only "the Prince of Special Pleaders," and really had done the business of the King's Bench exceedingly well for two years, but he had been in the frequent habit of inviting all grades of the profession to the genial board, where they found flowing cups as well as flowing courtesies.

Unpopularity of the appointment.

As I am henceforth to speak of the new Chief Justice almost exclusively in his judicial capacity, it may be convenient that I should at once proceed to the notice which I am called upon to take of him as a politician. He was introduced into the House of Peers in his robes between Lord Sydney and Lord Walsingham on the 26th of June, 1788.* Of course he was a steady supporter of

Lord Kenyon takes his seat in the House of Lords.

* "June 26, 1788.

"Sir Lloyd Kenyon, Baronet, being, by Letters Patent bearing date the 9th June, 1788, in the twenty-seventh* year of his present Majesty, created Baron

Kenyon of Gredington, in the county of Flint, was (in his robes) introduced between the Lord Sydney and the Lord Walsingham (also in their robes), the Gentleman Usher of the Black Rod and

* Sic.

the Government, although he very properly abstained from again making himself prominent as a political partisan.

In a debate which soon after arose upon the insanity of George III., Lord Porchester, to enforce the necessity of immediately restoring the exercise of the royal authority by addressing the Prince of Wales to act as Regent, stated—

A.D. 1789.

23rd Jan.

His speech

on the in-

sanity of

George III.

"That on Monday last two men had been butchered by a public execution, because the door of mercy was barred against them, and that these unfortunate convicts had been deprived of all opportunity of applying either for a pardon or for a temporary reprieve, although it had been laid down by Judge Blackstone that if a convict, after receiving sentence of death, loses his senses, execution is stayed, because, if he had retained his senses, he might have urged some plea to induce the Crown to remit or to mitigate his punishment."

Lord Kenyon: "It would ill become me to listen with silent indifference to a charge of so serious a nature, and urged with such vehemence against a judge. The judge who tried these criminals is now the party accused. If on the trial of a person

Garret King at Arms preceding. His Lordship on his knee presented his Patent to the Lord Chancellor at the Woolsack, who delivered it to the Clerk; and the same was read at the Table. His Writ of Summons was also read as follows (*videlicet*):

"George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth: To Our right trusty and wellbeloved Counsellor Lloyd Kenyon, of Gredington, in Our County of Flint, Chevalier, greeting: Whereas Our Parliament for arduous and urgent Affairs concerning Us, the State and Defence of Our Kingdom of Great Britain, and the Church, is now met at Our City of Westminster; We, strictly enjoining, command you under the Faith and Allegiance by which you are bound to Us, that considering the Difficulty of the said Affairs and Dangers impending, all Excuses being laid aside, you be personally present at

Our aforesaid Parliament with Us, and with the Prelates, Nobles, and Peers of Our said Kingdom, to treat of the aforesaid Affairs, and to give your Advice, and this you may in nowise omit as you tender Us and Our Honour, and the Safety and Defence of the said Kingdom and Church, and the Despatch of the said Affairs.

"Witness Ourselves at Westminster the Ninth Day of June, in the Twenty-eighth Year of Our Reign.

"YORK."

"Then his Lordship took the Oaths, and made and subscribed the Declaration; and also took and subscribed the Oath of Abjuration, pursuant to the Statutes, and was afterwards placed on the Lower End of the Barons' Bench.

"Garret King at Arms delivered in at the Table his Lordship's pedigree, pursuant to the Standing Order."—34 Journal, 249.

convicted of a capital crime, circumstances come out which warrant the judge in supposing that the verdict is wrong, it is his duty to respite the convict. If anything favourable appeared on the trial of the two persons executed on Monday, the judge who tried them ought to have respited them; and if he neglected his duty, they have not been butchered but murdered by him, which is a much higher offence. The judge guilty of such an act of criminal neglect, instead of being allowed to go in state to Westminster Hall next morning, ought to have been seized in his fur robes, dragged from the seat of justice, and hurried to that dungeon in which the two unfortunate men had lingered the last hours of their existence. I therefore call upon the noble lord to make good his charge, to name the judge, and to bring the real culprit to condign punishment."

Lord Porchester: "I bring no imputation on any judge. The judge who tried these two unfortunate prisoners is my own near relation, and a most honourable, enlightened and humane magistrate. But because the evidence against them on their trial might appear quite sufficient, does it follow that they might not have good reason to apply for pardon or reprieve, and ought they to have been hurried out of the world, while, contrary to our laws and our constitution, the power of extending mercy to them was suspended?"

Lord Kenyon returned no answer; but I apprehend he might have said, that in truth the ministers of the Crown continued to exercise the powers of their several offices; that a pardon or respite if fit to be granted would have been directed by the Secretary of State as effectually as if the King had been in full possession of his faculties.*

By this maiden speech our Chief Justice did not make a favourable impression, and he was so little satisfied with it himself, that he never again opened his mouth in the House of Lords till the question arose whether the impeachment of Mr. Hastings was abated by the dissolution of Parliament. Although so familiarly acquainted with every branch of our municipal law, he knew very little of the law of Parliament, and

He maintains that Mr. Hastings's impeachment had abated by the dissolution of Parliament. 16th May, 1791.

* 27 Parl. Hist. 1065.

it would have been better if on this occasion he had remained silent. He apologised for his defective information on the subject, as his professional engagements had prevented him from reading the report of the Committee appointed to search for precedents. He then strongly took the side of *abatement*. "If dry legal reasoning," said he, "and a strict attention to forms of practice (on which substantial justice depends) be unpleasant to your Lordships, you had better not call on lawyers for their opinions, but either send them out of the House, or not allow them to babble here." In commenting on the opinion of Lord Hale, he fell into the mistake of asserting, "as an undoubted fact, that this great judge would never sit on a criminal case during the Commonwealth, because he doubted the authority of Cromwell," whereas Hale undoubtedly took the oath to the Republican Government, and, till he had a difference with the Protector, tried criminal as well as civil cases without any scruple.* Good sense prevailed, and the quibble of *abatement* was crushed by a majority of 60 to 18.†

Lord Kenyon strongly opposed the Bill to prevent vexatious suits for small tithes, saying that
3rd July, 1789. "he could not consider it any oppression that persons should be imprisoned for sums as low as one shilling, for if any were so obstinate as to refuse the payment of legal dues, the law ought to be enforced. He, therefore, would not concur in pulling down a fabric which had stood so many years, and which was the chief support of the inferior clergy."‡

Our Chief Justice next came forward to oppose Mr. Fox's Libel Bill, which *declared* that juries had a right to determine whether the writing charged to be libellous is of an innocent or

April, 1792.
 He opposes
 Mr. Fox's
 Libel Bill.

* Lives of Chief Justices, vol. i. 527, 529.

† 29 Parl. Hist. 535.

‡ 28 Parl. Hist. 218.

criminal character. "He expressed his dislike of the loose and vague manner in which the Bill was worded. He pronounced its principles to be a direct contradiction to the practice of a long series of years, and that it was totally inadequate to the purpose it was meant to effect. It tended to alter the established law of the realm, and was a dangerous innovation upon the constitution. The only doubt was whether the truth should be taken as part of the defence, and if this Bill were to pass, a clause to determine that point would be absolutely necessary. He thought the Judges the only men who could give the necessary information, and he should move that the following questions be put to them:—1. On the trial of an indictment for libel, is the criminality or innocence of the paper set forth as the libel matter of fact or matter of law? 2. Is the truth or falsehood of the paper material, or to be left to the jury on a trial?"

Questions
proposed by
him for the
opinion of
the Judges.

The two questions were referred to the Judges, who unanimously answered that "it was for the Court alone and not for the jury, to determine whether the paper charged to be a libel was criminal or innocent," and "that proof of the truth could not be admitted; nay, that the doctrine for excluding it was so firmly settled and so essentially necessary for the maintenance of the King's peace and the good order of society, that it cannot be drawn into debate."*

On the motion for the second reading of the Bill, Lord Camden and Lord Loughborough still advised the House to pass it; but it would appear that Lord Kenyon would have remained silent had not Lord Stanhope made some observations which he supposed reflected upon him. This eccentric peer not only found fault with the direction given to the jury at the famous trial of

Lord Stan-
hope's speech
to banter
Lord
Kenyon.

* 29 Parl. Hist. 1361.

The King *v.* Stockdale, but, to illustrate the injustice which might be done by referring the question of "libel or no libel" to the Judges instead of the Jury, put the case of there being an indictment for an alleged libel, in denouncing the prosecution as "a great bore."

"If referred to the jury," said his Lordship, "they would immediately say, 'This is no imputation on moral character. We who attend in courts of justice know well that a person may be a *great bore* who is very desirous of discharging his duty, and is only very narrow-minded, dull, and tedious. Therefore we find a verdict of *not guilty*.' But if treated as a mere question of law the Judges would say, 'We read nothing in our books of a *bore* so spelt. Lord Coke says, 'the spelling of words signifieth naught.' We must consider that the libel denounces the prosecutor as a *great boar*. Now Manwood de Foresta lays it down that 'a *boar* is a beast of chase of an evil and ungovernable nature, the which it is lawful to follow and to kill.' Now, whereas the libel avers that the prosecutor is 'a *great boar*,' we must take this *in mitiori sensu*, and suppose the charge to be, not that the prosecutor is a *great boar*, but only that he has the qualities of a *great boar*. But these render him unfit for society as much as if he were infected with certain disorders, to impute which is libellous and actionable. A '*great boar*' is as much as to say a '*wild boar*,' which may lawfully be slain by those whom it attacks, even in the purlieu of a royal forest. Therefore we hold the defendant to be guilty, and we sentence him to be hanged."

Lord Kenyon: "After the unprovoked attack that has been made upon me, I must appear the meanest of mankind in your Lordship's estimation if I do not endeavour to defend myself. Every man cannot command the great abilities and the great eloquence which have been exhibited here this day; but there is one thing in every man's power, viz., *veracity*. The noble Earl, instead of seeking to obtain true information, chooses rather to attack me on false facts. In Stockdale's case, Mr. Erskine expressed himself quite satisfied with my direction, and I entirely approved of the verdict. The noble Earl has tried to cover with ridicule all that is held sacred. I honour trial by jury as much as any man; but let the jury be confined to their proper province, the trial of facts. I conjure your Lordships, therefore, to let the law remain as it is, with all its guards and fences about it. A man sitting on the bench suffers many an uneasy moment, and is obliged to consult

Lord
Kenyon's
answer.

his conscience to enable him to do his duty. Great are the advantages from the question of *libel* or *no libel* remaining exclusively with the Judges. If a man were indicted for publishing a paper which inculcated virtue and loyalty, instead of vice and sedition, I would not direct the jury to find a verdict against such a defendant. Cases have occurred where the jury have found the defendant *guilty*, and the Judges have stepped in and rescued him. As for the noble Earl to dabble in law, as he has attempted, it is as preposterous as if I were to quote Sir Isaac Newton's *PRINCIPIA*, or to go into a dissertation on Euclid's Problems.* The noble Earl's speech deserves no other notice, for instead of being proper for your Lordships to hear, it was rather calculated to inflame the lowest dregs of the people and to put them out of humour with the public administration of justice."†

However, from the noble support given to the Bill by Mr. Pitt's government it passed, and it has operated most beneficially. Thanks to the liberality of a succeeding age another Bill has passed, admitting evidence of the truth of the charge;—and this too has greatly promoted "the King's peace and the good order of society," which the Judges said the mere mention of such a measure would fatally subvert.‡

For the five following years, perhaps the most interesting in our parliamentary annals, Lord Kenyon appears never to have opened his lips in the House of Peers, and I find him only once more addressing this assembly, although he very regularly voted or gave his proxy in favour of the Government.

Lord Moira had brought in a Bill to abolish imprisonment for debt. Among other petitions in favour of the Bill, there was one detailing the abuses supposed to prevail in the King's Bench prison, and asserting that from the sale of beer and spirits to the debtors, large profits were derived by the Lord Chief

Charge that he made a pecuniary profit by the abuses in the King's Bench prison.

* Sic. He seems to have thought it great presumption for a lawyer to pretend to have crossed the *Pons Asinorum*.

† 29 Parl. Hist. 1294, 1431.

‡ Lord Campbell's Libel Bill, 6 & 7 Vict. c. 96.

Justice. The noble Lord who introduced the Bill declared that he believed that these charges were false and calumnious.

27th March,
1797. Lord Kenyon, rising with evident agitation,
spoke as follows :—

“ My Lords, when I came down to the house this day I did not know whether I should not be dragged to your Lordships’ bar as a criminal. I beg your Lordships’ indulgence, therefore, while I express my injured feelings. It is most true that the vile charge against me alluded to by the noble Lord has excited my grief and indignation. Who would have supposed that there was a single man in the kingdom base enough to believe me guilty of such misconduct, and barefaced enough to put such an accusation upon paper ? Although I am not now upon my oath I speak under a sense of the duty I owe both to God and man, and I take this opportunity of solemnly declaring, as I hope for salvation at the day of judgment from that all just and benevolent Being to whom I am to answer for my conduct in this life, that every syllable of the accusation is utterly false. I have never received any profit or emolument from the abuses which have been mentioned, yet a slanderer asserts that they were for my profit and emolument sanctioned by me in my judicial capacity, and I am represented as avariciously sharing the plunder with gaolers, turnkeys, and tipstaves. Under my present feelings I most earnestly beseech and implore your Lordships to appoint a committee to inquire into my conduct, and I pledge myself to adduce evidence before that committee to prove what I now solemnly aver. But for the public good I am clearly of opinion that imprisonment for debt should continue. I insist that the law of arrest, as it now prevails, has conduced in an essential degree to the increase of commerce and the extension of trade. The most serious consequences would follow if the security which it offers to the creditor were weakened. It is impossible altogether to prevent abuses, but when they come to my knowledge they shall never be countenanced, nor the authors of them suffered to go unpunished.”*

The Bill was thrown out by a majority of 37 to 21, and did not pass till above forty years afterwards, when I had the honour to re-introduce it.

Henceforth Lord Kenyon, when attacked, instead of

* 33 Parl. Hist. 181.

defending himself in debate in the House of Lords, "changed the venue" to the Court of King's Bench, where he could both indulge in a little self-laudation, and retaliate upon his accusers without any danger of a reply.

Lord
Kenyon's
improved
tactics in
self-defence.

He never brought forward any Bill for the amendment of the law, nor did he even attend to the judicial business of the House of Lords. This cannot be celebrated as a very glorious parliamentary career. Indeed if a Chief Justice of the King's Bench is to do so little for the public as a peer, there seems no reason why he should be ennobled. His official rank is abundantly sufficient to insure respect to a man of character and ability, and a peerage is conferred upon him, not that he may frank letters or walk in a procession, but that he may assist in the supreme Court of Appeal for the empire, and, as a legislator, he may strive to improve our laws and institutions.

I am much pleased that we are now to see Lord Kenyon presiding on his tribunal in Westminster Hall. Here he appeared to infinitely greater advantage. Although not free from considerable defects, in spite of them he turned out to be a very eminent common law Judge. His thorough acquaintance with his craft, his intuitive quickness in seeing all the bearings of the most complicated case, and his faculty of at once availing himself of all his legal resources, gave him a decided advantage over competitors who were elegant scholars, and were embellished by scientific acquirements. He had a most earnest desire to do what was right; his ambition was to dispose satisfactorily of the business of his Court, and to this object he devoted his undivided energies.

His judicial
character.

However, the misfortune of his defective education now became more conspicuous, for he had not acquired enough general knowledge to make him ashamed or

sensible of his ignorance, and without the slightest misgiving he blurted out observations which exposed him to ridicule. He was particularly fond of quoting a few scraps of Latin which he had picked up at school, or in the attorney's office, without being aware of their literal meaning. In addition to the "modus in rebus,"* he would say, that in advancing to a right conclusion, he was determined *stare super antiquas vias*, and when he declared that there was palpable fraud in a case, he would add "apparently *latet anguis in herbá*." At last George III., one day at a levee, said to him, "My Lord, by all I can hear it would be well if you would stick to your good law and leave off your bad Latin," but this advice, notwithstanding his extraordinary loyalty, he could not be induced to follow.

A more serious obstacle to the dignified discharge of his judicial duties arose from his hasty and ungovernable temper. He is said to have surprised his friends for a few weeks after taking his seat as Chief Justice with a show of courtesy, but he soon gave up the unequal contest, and his brother Judges, the bar, and the solicitors were by turns the victims of his choler. We have the following account of his demeanour in Court from a barrister who practised under him all the time he was Chief Justice :—

"The supercilious reception which he gave to the opinions of the other Judges was not that merely of neglect, it bordered on contempt. He predominated over them with high ascendancy. They very rarely differed from him; if they did their opinions were received with a coldness which stooped not to reply, or, if noticed, were accompanied with angry observation. He was irritated by contradiction, and impatient even of an expression of doubt of the infallible rectitude of what he had delivered as his judgment. In differing with his predecessors he used no soft or

* Ante, p. 24, his observation in Dean of St. Asaph's case.]

measured language. Having occasion to contravene a dictum of Chief Justice Holt, 'he wondered that so great a Judge should have descended to petty quibbles to overturn law and justice;' and when a saying of Lord Mansfield was cited respecting the right to recover a total loss on a valued policy, with a small interest actually on board, he declared that 'this was very loose talking, and should not be ratified by him.' When a new trial was moved for against a ruling of his own, on the ground of mis-direction, he would scarce give time to his colleagues to deliberate together, but at once burst out, 'If the rest of the Court entertain any doubt the case may be farther considered, but I am bound to give the same opinion I formerly gave—not because I gave that opinion before, but because I am convinced by the reasoning that led to it.' Whenever his brother Judges ventured to differ from and overrule his decisions (there were scarcely a dozen cases in the course of fourteen years which called for this exhibition of fortitude), his manner, evinced as much testiness as if he had received a personal affront. If a word escaped from a counsel not quite in accordance with his sentiments, his temper blazed into a flame which could scarcely be subdued by humility. On these occasions he gave loose to an unchecked effusion of intemperate expression, and his language was not chastened by the strict rule of good breeding. Mr. Law, when leader of the Northern Circuit, having moved rather pertinaciously for a new trial, Lord Kenyon thus concluded his judgment—'You will take nothing by your motion but the satisfaction of having aired your brief once more.' Nor while thus offensive to those more advanced in the profession could he claim as a set off the merit of being gracious and encouraging to the junior portion of the bar. An irregular application, though it proceeded from inexperience only, was received without the indulgence which was due to it; if made by the more experienced it was received with contumely. He would say, 'You know you cannot succeed. You do not expect to succeed.'

A graver fault was his indulging in partialities for and antipathies against particular barristers.

Erskine was his pet—he delighted to decide in favour of this popular advocate, and when obliged to overrule him he would give his head a good-natured shake, and say with a smile, "It won't do, Mr. Erskine, it won't do." Law, on the contrary, was so snubbed by him, that at last he openly complained

His partialities and antipathies.



of his constant hostility in the well-known quotation:—

“Non me tua fervida terrent
Dicta, ferox [pointing to Erskine]; Di me terrent,—
[Pointing to the Bench]—et JUPITER hostis.”

Such was the general opinion respecting the infirmity of his temper that the following anecdote was circulated and believed, although the epigrammatic point and the rudeness which it imputes to George III. were equally at variance with the character of that royal personage: “Lord Kenyon being at the levee soon after an extraordinary explosion of ill humour in the Court of King’s Bench, his Majesty said to him, ‘My Lord Chief Justice, I hear that you have lost your temper, and from my great regard for you I am very glad to hear it, for I hope you will find a better one.’”

All these failings, nevertheless, were much more than counterbalanced by his professional learning, his energy, and his probity, so that he was not only admired by common jurymen who were on a level with him as to general acquirements, and with whose feelings and prejudices he sympathised, but his brother Judges, in all the Courts at Westminster, owned his superiority, the bar succumbed to his despotic sway, and the public, while they laughed at his peculiarities, confided in him and honoured him. I can hardly point out any principle on which he openly professed to differ from his predecessor, except the rigid enforcement of the rule, that in the possessory action of ejectment the *legal estate* shall always prevail. Lord Mansfield had not only very properly decided that the tenant may not dispute the title of the lessor under whom he occupies, and that satisfied terms may be presumed to be surrendered, but in some cases he had gone farther, and held where

George III.’s congratulation to him on the loss of his temper.

His anxiety for the rights of the “legal estate.”

there was no estoppel, that unsatisfied out-standing terms should not bar an ejectment if the party bringing the ejectment would agree to recover, and to hold the premises subject to the uses of these terms.* But Lord Kenyon overruled Buller, who followed the doctrine of Lord Mansfield,—and, supported by Ashurst and Grose, held that a court of law was wholly incompetent to consider *trusts*, and, there being no estoppel, that an outstanding term, if there was no sufficient ground for presuming it to be surrendered, was universally a complete bar to the ejectment.†

He likewise induced the Court to hold against a decision of Lord Mansfield, that an action cannot be maintained in a court of law for a pecuniary legacy, although the executors have assets in their hands from which it might be paid, as a Court of Equity has the means of determining such questions much more satisfactorily, and of doing justice to all who may be interested in the fund.‡ With still more doubtful policy he overturned some decisions of Lord Mansfield respecting actions by and against married women separated from their husbands by a divorce *a mensa et thoro*, or under articles of separation with property settled upon them, or where they had declared themselves to be, and had acted as single women, the rule being now laid down that a married woman cannot bring an action or be impleaded as a *feme sole* while the relation of marriage subsists,—although the common law furnished the analogy of a married woman acquiring a separate character by the exile of her husband, or by his entering into religion.§

His decision that no action at law can be maintained for a legacy.

Rule that a married woman shall never be permitted to sue or to be sued as a single woman.

* Doe dem. Bristow v. Pegge, 1 T. R. 758, n.

† Doe dem. Hodsden v. Staple.

‡ Deeks v. Strutt, 5 T. R. 690.

§ Marshall v. Rutton, 8 T. R. 545. One of the most remarkable instances of

an action by a married woman is that by Lady Belknappe (wife of the Lord Chief Justice), when her husband had been transported to Ireland. 'Lives of Chief Justices,' vol. i. p. 113.

I am not aware of any other decisions to justify the oft-repeated assertion that "Lord Kenyon restored the simplicity and rigour of the common law." *

I shall now proceed to mention some of the most remarkable cases which came before him as Chief Justice of the King's Bench.

Soon after his elevation, he tried the famous *ex-officio* information of *Rex v. Stockdale*, the prosecution having been ordered by the House of Commons for a supposed libel upon that assembly, in the shape of a defence of Mr. Hastings. The Chief Justice's direction to the jury on this occasion was wholly unexceptionable; but considering that the Bill had not yet passed declaring the right of juries to judge of the character and tendency of papers charged as libellous, as well as the act of publication, I am quite at a loss to reconcile his direction with the opinion he peremptorily gave in the House of Lords, and often repeated afterwards, that "libel or no libel" was a pure question of law, to be decided by the Court. He had strongly sided with the defenders of Hastings, and very much approved of the sentiments which the prosecuted pamphlet expressed,—thinking that the House of Commons had been guilty of oppression and vexation in the manner in which they had instituted and conducted the impeachment. Perhaps his wish for an acquittal might have unconsciously biassed his judgment. But, however this may be, he distinctly told the jury that they were to consider whether the sense which the Attorney-General had affixed to the passages set out in the information was fairly affixed to them. According to the old doctrine, the jury were to consider whether the innuendoes in the information were made out, such

* The observation would have been more just, that "he successfully resisted Lord Mansfield's attempts to bring about a fusion of Law and Equity."

as that "H—— of C——" meant *House of Commons*, or that "the K——" meant *our Sovereign Lord the King*, and nothing further. But here the Lord Chief Justice Kenyon said:—

"You must make up your minds that this was meant as an aspersion upon the House of Commons, and I admit that you are not bound to confine your inquiry to those detached passages which the Attorney-General has selected as offensive. But let me, on the other side, warn you that though there may be much good writing, good argument, morality and humanity in many parts of it, yet, if there are offensive passages, the good part will not sanctify the bad part. You have a right to look at the whole book, and, if you find the passages selected by the Attorney-General do not bear the sense imputed to them, the defendant has a right to be acquitted, and God forbid he should be convicted. You will always be guided by this—that where the tendency is ambiguous and doubtful, the inclination of your judgment should be on the side of innocence. It is not for me to comment further upon the pamphlet: my duty is fulfilled when I point out to you what the questions are proposed for your determination; the result is yours, and yours only."

The jury, after two hours' deliberation, found a verdict of NOT GUILTY; but, according to the doctrine laid down unanimously by the Judges in the House of Lords, the defendant ought certainly to have been convicted; for the act of publication was admitted, and the technical *innuendoes* were proved; so that the acquittal proceeded upon the ground that the intention of the pamphlet was fairly to discuss the merits of the impeachment, not to asperse the House of Commons, or, in other words, that the pamphlet was not a libel, the jury, with the consent of the Judge, having exercised the power afterwards conferred on juries by Mr. Fox's Libel Bill.*

When the French Revolution broke out, and the reign of terror began in England, I am sorry to say that Lord Kenyon strongly abetted the system of repressing

* 22 St. Tr. 237-303.

Jacobin principles by ill-advised prosecutions and cruel punishments, rather than by amending our laws and by the mild and dignified administration of justice. The first case which came before him, arising out of the revolutionary movement, was an *ex officio* information by the Attorney-General against Dufleur and Lloyd, two prisoners confined for debt in the Fleet Prison, charging them with a conspiracy to escape and to subvert the Government, because they had affixed upon the gate of the prison a paper containing the following ADVERTISEMENT :—

His severe sentences in prosecutions for alleged sedition.

“ This House to Let ; peaceable possession will be given on or before the 1st of January, 1793, being the commencement of the first year of liberty in Great Britain.”

Pasquinade against imprisonment for debt.

This pasquinade against imprisonment for debt, composed for the amusement of the debtors, the Chief Justice gravely treated as a seditious libel ; and the defendants, being found guilty, were sentenced to stand in the pillory.*

The trial and punishment of John Frost, the attorney, were still more discreditable. While in a coffee-house, under the excitement of wine, he was overheard to use some indiscreet expressions respecting the French Republic and a monarchical form of government. Notwithstanding an admirable defence by Erskine, he was found guilty of sedition, and the senior Puisne Judge having pronounced sentence “ that he should be imprisoned six months in Newgate, that he should stand on the pillory at Charing Cross, and find sureties for his good behaviour for five years,” Lord Kenyon, C. J., added, with great eagerness, “ and also be struck off the roll of attorneys of this Court,”

John Frost's case.

* 22 St. Tr. 317-358.



whereby he was to be rendered infamous and to be irretrievably ruined, so that death really would have been a milder sentence.*

The next political case which came before him was remarkable as being the first prosecution for libel under Mr. Fox's Libel Bill, and to the Chief Justice's shame it must be recorded that he misconstrued and perverted this noble law,—establishing a precedent which was followed for near half a century to the manifest grievance of the accused.

An information was filed by the Attorney-General against the proprietor and printer of the *Morning Chronicle* for publishing in that journal certain resolutions of a public meeting held at Derby in favour of parliamentary reform and against abuses in the government, based upon this principle:—"That all true government is instituted for the general good, is legalized by the general will, and all its actions are or ought to be directed for the general happiness and prosperity of all honest citizens."

Rex v. Perry.
A.D. 1793.

Lord Kenyon (to the Jury): "A great deal has been said by the counsel for the defendants about parliamentary reform. Before I would pull down the fabric or presume to disturb one stone in the structure I would consider what those benefits are which it seeks. I should be a little afraid that when the water was let out, nobody could tell how to stop it; if the lion was once let into the house, who would be found to shut the door?—The merits or demerits of the late law respecting the trial of libel I shall not enter into. It is enough for me that it is the law of the land, which by my oath I am bound to give effect to, and it commands me to state to juries what my opinion is respecting this or any other paper brought into judgment before them. When these resolutions appeared in the newspaper of the defendants the times were most gloomy—the country was torn to its centre by emissaries from France. It was a notorious fact—every man knows it—I could neither open my eyes nor my ears without seeing and hearing them. Weighing thus all the circumstances—that the paper was published when those emissaries were

* 22 St. Tr. 471-522.

spreading their horrid doctrines; and believing there was a great gloominess in the country—and I must shut my eyes and ears if I did not believe that there was;—believing also that there were emissaries from France wishing to spread the maxims prevalent in that country in this,—believing that the minds of the people of this country were agitated by these political topics of which the mass of the population never can form a true judgment, and reading this paper, which appears to be calculated to put the people in a state of discontent with everything done in this country,—*I am bound by my oath to answer that I think this paper was published with a wicked, malicious intent to vilify the Government and to make the people discontented with the constitution under which they live.*—This is the matter charged in the information;—that it was done with a view to vilify the constitution, the laws, and the government of this country, and to infuse into the minds of his Majesty's subjects a belief that they were oppressed, *and on this ground I consider it as a gross and seditious libel.* It is not sufficient that there should be in this paper detached good morals in part of it unless they give an explanation of the rest. There may be morality and virtue in this paper; and yet, apparently *latet anguis in herbâ*. There may be much that is good in it, and yet there may be much to censure. I have told you my opinion. Gentlemen, the constitution has intrusted it to you, and it is your duty to have only one point in view. Without fear, favour, or affection, without regard either to the prosecutor or the defendants, look at the question before you, and on that decide on the guilt or innocence of the defendants."

The Act of Parliament* only required the Judge to deliver his opinion in point of law to the jury on the trial of libel "in like manner as in other criminal cases," and therefore he was only bound to tell the jury that if from the contents of the paper and the circumstances under which it was published it was meant to vilify the government and constitution and to infuse discontent into the minds of the people, it was in point of law a libel, without taking upon himself as a matter of fact to determine that such was the intent.†

* 32 Geo. III., c. 60, s. 2.

† I myself heard a succeeding Judge say, "The Act requires me to declare to

you my opinion in point of law, and I am clearly of opinion that this is a most wicked, seditious, and diabolical libel."

The jury, after two hours' deliberation, found a verdict of GUILTY OF PUBLISHING, BUT WITH NO MALICIOUS INTENT; and being told that this verdict could not be received,—after sitting up all night, they next morning returned a general verdict of NOT GUILTY.*

When it was resolved to charge Hardy, Horne Tooke, and other reforming associates of Mr. Pitt with the crime of high treason because they had steadily and zealously adhered to the cause which he had deserted, the plan at first was that they should be tried before Lord Kenyon in the Court of King's Bench; but some apprehension was entertained of his intemperance of manner, and they were arraigned at the Old Bailey before that quiet and safe Judge, Chief Justice Eyre. But William Stone, the London merchant, who was very fairly and constitutionally accused of "adhering to the King's enemies" by writing letters inviting the French to invade England, was tried at the King's Bench bar; and the case being quite unconnected with parliamentary reform or party politics of any sort, Lord Kenyon presided on this occasion with great moderation. He thus laid down the law:—

A.D. 1796.

Stone is tried
for treason
before Lord
Kenyon.

"If a communication is made to a government at war with England which may tend to be of any assistance to that government in annoying us or defending themselves, such communication is beyond all controversy high treason. It will be for the jury to look at the papers given in evidence, and consider whether they were meant to assist the French in the invasion of this country. This is what upon my oath I am bound to state to you; if I misstate it, I shall be corrected by the learned judges who sit near me; and I shall not be sorry to be interrupted if I state anything which renders interruption necessary, because it never comes too late when the blood of a fellow-subject is at stake; but I am bound to do it: it is not a pleasant task; but, thus circumstanced, unpleasant as the task is to any man of feeling, I must meet my situation and summon up my fortitude as well as I can to discharge it as well as my faculties will permit me."

* Rex v. Perry and Lambert, 22 St. Tr. 953-1020.

The letters were very culpable, but Erskine raised a doubt in the minds of the jury whether they had been written with any treasonable intent, and after long deliberation there was a verdict of *not guilty*.*

When the trial came on of the very foolish prosecution moved by the Whigs in the House of Commons against John Reeve, for a libel on the English constitution, because he had written that "monarchy is the trunk from which the two Houses of Parliament had sprung as branches," Lord Kenyon thus rather boastfully paraded his constitutional learning:—

20th May,
1796.
Trial of John
Reeve for a
libel on the
House of
Commons.

"Sufficient knowledge of the constitution is a degree of knowledge which we all of us have in our several stations—at least everybody who has had a liberal education; it is a knowledge we have all of us probably about us—we all know that the legislature of this country consists in the King, the Lords, and the Commons—that the executive power rests with the King alone, liable to be superintended and to be corrected too by the two Houses of Parliament—not to be corrected in the King's person, because that by the constitution is inviolable, 'the King can do no wrong'—but to be corrected in those ministers through whose agency active government is carried on."

He thus concluded, making a new noun-substantive:—

"The *quo-animo* which the prosecution imputes to the defendant is this, that he by this publication intended to raise and excite jealousies and divisions among the liege subjects of our Lord the King, and to alienate their affections from the government by King, Lords, and Commons, now duly and happily established by law in this country, and to destroy and subvert the true principles and the free constitution of the government of the realm. The Attorney-General says, the pamphlet intended to impress upon the public that the regal power and government of this realm might, consistently with the freedom of this realm as by law declared and established, be carried on in all its functions by the King of this realm, although the two Houses of Parliament should be suppressed and abolished. This is the *quo-animo* which is imputed to this

* 25 St. Tr. 1155-1438.

person; and you are to find whether your consciences are satisfied that these were the motives which influenced him in the publication."

In substance this was a very sound direction; and, notwithstanding his recent construction of the late Act of Parliament in the case of *Rex v. Perry*, he abstained from telling the jury whether in his opinion the pamphlet was a libel or not. The jury said, "We are of opinion that the pamphlet is a very improper publication, but that the defendant's motives were not such as are laid in the information, and therefore we find him NOT GUILTY."*

Lord Kenyon's extreme moderation in this case some accounted for from the circumstance, that the sentiments contained in the supposed libel agreed very much with his own. When writers who had taken the other side of the question were prosecuted, he was more and more furious against them.

The very learned, though wrong-headed Gilbert Wakefield, a clergyman of the Church of England, who said he was a Reformer like his divine Master, being prosecuted by the Attorney-General as author of a pamphlet supposed to have a democratical tendency; and being gallantly defended by Erskine, who urged that a little indulgence might be shown to the eccentricities of one of the finest scholars of whom England could boast, Lord Kenyon thus summed up to the jury:—

Trial of
Gilbert
Wakefield.

"The defendant has stated that his conduct is founded upon the doctrines promulgated by the Saviour; but surely he has this day shown himself to be very little influenced by them. Such are not the feelings and the conduct to which the Christian religion gives birth. *Ingenuas didicisse fideliter artes emollit mores* is an expression which has often been used, but the experience of this case shows that it is not always correct."

* 26 St. Tr. 529-596.

The defendant, speaking in mitigation of punishment, said—

“Carmina tantum
Nostra valent, Lycida! tela inter Martia quantum
Chæonias dicunt, aquila veniente, Columbas.”

Accordingly he was sentenced to two years' imprisonment in Dorchester gaol, and to find sureties for his good behaviour for five years longer.*

Still more censurable was the conviction of Mr. Cuthill, a most respectable classical bookseller. Although he had published Gilbert Wakefield's other works, he had declined to publish this pamphlet because it was not in his line; but when it had been published by another bookseller, a few copies of it were sold in defendant's shop by his servant without his authority or knowledge:—

¹ *Lord Kenyon*: “Before I enter upon the cause itself, I beg leave to say, that I see no good in what has lately taken place in the affairs of another country; I see no good in the murder of an innocent monarch; I see no good in the massacre of tens of thousands of the subjects of that innocent monarch; I see no good in the abolition of Christianity; I see no good in the depredations made upon commercial property; I see no good in the overthrow and utter ruin of whole kingdoms, states, and countries; I see no good in the destruction of the Swiss, a brave and virtuous people. In all these things I confess that I see no good.”

He then spoke very disparagingly of the late Libel Bill, saying that he had strenuously opposed it as it passed through Parliament, adding—

“It was a race of popularity between two seemingly contending parties;† but in this measure both parties chose to run amicably together.”

Having stated that the evidence was abundantly sufficient to fix the defendant, he thus concluded:—

“If you think it is possible to keep government together with

* 27 St. Tr. 679-760.

† Meaning *Forbes* and *Pittiles*.

such publications passing through the hands of the people, you will say so by your verdict and pronounce that this is not a libel; but in my opinion that would be the way to shake all law, all morality, all order, and all religion in society. The point is most momentous in this country, and you are now to determine upon it, and to say whether the law is to be preserved, or whether everything should be thrown into confusion."

The defendant was immediately found guilty; but the usage he had experienced on his trial caused such scandal that he was afterwards let off on paying a nominal fine.*

The proprietor of the *Courier* newspaper did not escape so easily, although his offence was equally venial. He had copied into his journal a paragraph stating the undoubted truth, that Paul I., Emperor of Russia, had made himself odious and ridiculous to his own subjects by forbidding the exportation of timber and other Russian produce from his dominions to Great Britain. Erskine, for the defendant, contended that the supposed libel was a fair comment upon a tyrannical and foolish act, and was meant to vindicate the rights of Englishmen, not to insult foreigners.

4th March,
1799.
Trial of the
proprietor of
the *Courier*
for a libel on
the Emperor
Paul.

Lord Kenyon: "What could have induced the princes of Europe to the conduct some of them have pursued, I will not

* In his violent address to the jury in this case, Lord Kenyon alludes to the state of affairs then subsisting in Europe, which, although it cannot justify his conduct in the trial of prosecutions for sedition, ought very much to mitigate the censure with which it is to be visited. Nothing could be more unfair than to judge him by the standard of propriety established in the quiet times in which we live. With shades of difference among politicians as to the extension of the franchise, vote by ballot, and the duration of parliaments, all the Queen's subjects are attached to the constitution, and disposed to obey the law. Then there was a small but formidable party,

composed of some who sincerely believed that for the public good all existing institutions should be abolished, and of others recklessly desirous to bring about bloodshed and confusion, in the hope of grasping at wealth and power for themselves. The great body of the loyal and well intentioned were then in a panic, and thought that the best course for safety was to enact new penal laws, and visit with remorseless severity all those persons from whom their fears had arisen. Lord Kenyon, I am convinced, on every occasion was persuaded that he acted lawfully as well as conscientiously, and he was regarded by many as the saviour of his country.

venture to investigate; but, sitting in a court of law, I am bound to say that it does not absolve states from enforcing a decent respect to the magistracies of each other, and to the persons of sovereigns executing the law. All governments rest mainly on public opinion, and to that of his own subjects every wise sovereign will look. Between the sovereign and the people of every country there is an express or implied compact for a government of justice. Yet the Emperor of Russia is here said to be a transgressor of all law. In private life a similar charge would be the foundation of an action for damages; and why is a great sovereign to be deprived of all remedy? It is for you, gentlemen of the jury, who come out of that rank which enables you to judge of the interests of the commercial world, to pronounce whether this is or is not a dangerous publication? I am bound by my oath to declare my own opinion, and I should forget my duty if I were not to say to you THAT IT IS A GROSS LIBEL."

The defendant was found guilty, and reckoned himself lucky to get off with six months' imprisonment, and a fine of 100*l*.*

On the trial of Williams for publishing 'Paine's Age of Reason,' Lord Kenyon, in summing up, tried to rival Erskine's famous address in defence of revealed religion:

Trial of
Williams for
publishing
'Paine's Age
of Reason.'

"Christianity," said he, "from its earliest institution met with its opposers. Its professors were very soon called upon to publish their 'Apologies' for the doctrines they had embraced. In what manner they did that, and whether they had the advantage of their adversaries, or sunk under the superiority of their arguments, mankind for near two thousand years have had an opportunity of judging. They have seen what Julian,† Justin Martyr, and other apologists have written, and have been of opinion that the argument was in favour of those publications. We have heard to-day that the light of nature and the contemplation of the works of creation are sufficient without any other revelation of the Divine will. Socrates, Plato, Xenophon, Tully—each of them in their turns professed they wanted other lights, and knowing and confessing that God was good, they took it for granted the time would come when He would impart another revelation of His will

A.D. 1797.
Lord Ken-
yon's display
of his know-
ledge of ec-
clesiastical
history.

* 27 St. Tr. 627-642.

† Sic.

to mankind. Though they walked as it were through a cloud, darkly, they hoped their posterity would almost see God face to face."

The *talesmen* did not know which to admire most, the piety, the learning, or the eloquence of the judge. The defendant was very properly found *guilty*, and sentenced to a year's imprisonment with hard labour.*

I now come to a trial at which I was myself actually present—the prosecution of Hadfield for shooting at George III.

On the 26th of June, 1800, for the first time in my life I entered the Court of King's Bench, and with these eyes I beheld Lord Kenyon. The scene was by no means so august as I had imagined to myself. I expected to see the Judges sitting in the great hall, which, though very differently constructed for magnificence, might be compared to the Roman Forum. The place where the trial was going on was a small room enclosed from the open space at the south-east angle, and here were crowded together the Judges, the jury, the counsel, the attorneys, and the reporters, with little accommodation for bystanders. My great curiosity was to see Erskine, and I was amazingly struck by his noble features and animated aspect. Mitford, the Attorney-General, seemed dull and heavy; but Grant, the Solicitor-General, immediately inspired the notion of extraordinary sagacity. Law looked logical and sarcastic. Garrow verified his designation of "the tame tiger." There were five or six rows of counsel, robed and wigged, sitting without the bar—but I had never heard the name of any of them mentioned before. I was surprised to find the four Judges all dressed exactly alike. This not being a Saint's day, the Chief Justice did not wear his collar of SS. to distinguish him from his

26th June,
1800.
Trial of
Hadfield,
when the
biographer
first saw
Lord Ken-
yon.

* 26 St. Tr. 653-720.

brethren.* There was an air of superiority about him, as if accustomed to give rule, but his physiognomy was coarse and contracted. Mr. Justice Grose's aspect was very foolish, but he was not by any means a fool, as he showed by being in the right when he differed from the rest.† Mr. Justice Lawrence's smile denoted great acuteness and discrimination. Mr. Justice Le Blanc looked prim and precise.

From the opening of the case by the Attorney-General, I formed a very low estimate of the eloquence of the English bar; but when Erskine began the defence, he threw me into a phrensy of admiration, and indeed I should have been fit for nothing had I been less excited; for this was perhaps his *chef d'œuvre*, and therefore the finest speech ever delivered at the English bar.

Lord Kenyon did not interpose till several witnesses had distinctly proved the mental hallucination under which the prisoner had laboured when he fired at the King. The solemn proceeding was then thus terminated.

Proof of the
prisoner's
insanity.

Lord
Kenyon
interferes
and puts an
end to the
trial.

Lord Kenyon: "Mr. Erskine, have you nearly finished your evidence?"

Mr. Erskine: "No, my Lord, I have twenty more witnesses to examine."

Lord Kenyon: Mr. Attorney-General, can you call any witnesses to contradict these facts? With regard to the law as it has been laid down, there can be no doubt upon earth. To be sure if a man is in a deranged state of mind at the time he commits the act charged as criminal, he is not answerable. The material question is *whether at the very time when the act was committed this man's mind was sane?* I confess that the facts proved convince my mind that at the time he committed the supposed offence (and had he then known what he was

Sound view
of the ques-
tion how
far mental
disease ex-
empts from
criminal re-
sponsibility.

* This was written before I had taken my seat as Chief Justice; and I had erroneously supposed that the collar of SS is worn on saints' days, along with the scarlet and ermine.

† "Grose Justice, with his lantern jaws,
Throws light upon the English laws."

Complimentary Epigram by Erskine.

doing, a most horrid offence it was) he was in a very deranged state. Mr. Attorney-General, you have heard the facts given in evidence. To be sure, such a man is a most dangerous member of society, and it is impossible that he can be suffered, supposing his misfortune to be such, to be let loose upon the public. But I throw it out for your consideration, whether in this criminal prosecution it is necessary to proceed farther. If you can show it to be a case by management to give a false colour to the real transaction, then assuredly the defence vanishes."

Mr. Attorney-General: "I must confess I have no reason to suspect that this is a coloured case. On the contrary, I stated that I understood the prisoner had been discharged from the army upon the ground of insanity. But the circumstances which have now appeared were perfectly unknown to me."

Lord Kenyon: "Your conduct, Mr. Attorney-General, has been extremely meritorious. In the present posture of the cause, I will put it to you whether you ought to proceed."

Mr. Attorney-General: "Your Lordship will feel how much it was necessary for me to wait until I should have some intimation on the subject."

Lord Kenyon: "It was necessary for us all to wait till the cause had reached a point of maturity. The prisoner, for his own sake and for the sake of society at large, must not be discharged. This is a matter which concerns every one of every station, from the King on the throne to the beggar at the gate. Any one might fall a sacrifice to this frantic man. For the sake of the community, he must somehow or other be taken care of, with all the attention and all the relief that can be afforded to him."

Attorney-General: "I most perfectly acquiesce in what your Lordship has said."

Lord Kenyon: "Gentlemen of the jury, the Attorney-General's opinion coinciding with mine, I believe it is necessary for me to submit to you whether you will not find that the prisoner at the time he committed the act was not under the guidance of reason?"

The jury finding accordingly, the prisoner was detained in custody—somewhat irregularly, there being then no law to authorize the detention, but the statutes 46 Geo. III., chapters 93, 94, were passed, legalising the detention in this and all similar cases.*

* 27 St. Tr. 1281-1356.

On this occasion Lord Kenyon conducted himself with great propriety, laying down the sound rule which ought to prevail where the defence to a criminal charge is *insanity*, and applying that rule with promptness and precision to the facts which were proved before him.—In the next case which I have to mention he was very unfortunate, and he justly incurred considerable obloquy.

Benjamin Flower having published a paragraph in a Cambridge newspaper of which he was proprietor, reflecting on Dr. Watson, Bishop of Llandaff, complaint was made of it in the House of Lords as a breach of privilege, and without any summons or hearing of the party accused, it was voted a libel, and he was ordered to be taken into custody by the Serjeant-at-Arms. Accordingly he was arrested at Cambridge, brought a prisoner to London, and produced at the bar. A motion was then made that for this supposed offence he should be fined 100*l.* and confined six months in Newgate.

Lord Kenyon supported the motion, and said there was no ground for complaint on the score of severity, for if the libel had been prosecuted in the King's Bench, the defendant would not have got off with so slight a punishment.

After the defendant had lain some weeks in Newgate, he applied for his liberation to the Court of King's Bench, by Mr. Clifford, a descendant of the Cliffords Earls of Cumberland,—when the following dialogue took place between the counsel and the Chief Justice.

Dialogue
between
Mr. Clifford,
and Lord
Kenyon on
moving for
a writ of
Habeas
Corpus.

Mr. C. "I humbly move your Lordship for a writ of *habeas corpus*, to be directed to the keeper of Newgate, commanding him to bring into court the body of Benjamin Flower." C. J. "Is not Mr. Flower committed by the House of Lords for a

breach of privilege?"—*Mr. C.* "Yes, for a libel and breach of privilege." *C. J.* "Then you know very well, Mr. Clifford, you cannot succeed. This is an attempt which has been made every seven or eight years for the last half century; it regularly comes in rotation; but the attempt has always failed. You do not expect to succeed?"—*Mr. C.* "I do expect to succeed. I should not make this application unless I knew I could support it. My affidavit states, that Mr. Flower is imprisoned in Newgate for a supposed libel on the Bishop of Llandaff, that he is not conscious of having libelled the Bishop of Llandaff, or any one else, and that he has never been put upon his defence."—*C. J.* "Does he swear that it is not a libel on the Bishop of Llandaff?" *Mr. C.* "He swears that he is not conscious that it is a libel."—*C. J.* "Another part of his affidavit is also false, that he was not put upon his defence. I happened to be one of his judges—I was in the House of Lords at the time. File your affidavit, Sir, that your client may be prosecuted. You shall take nothing by your motion."

The counsel, however, insisted on being heard, to argue the question that the commitment was illegal, and at last Lord Kenyon said,—

"If you will have it, take your writ. It will be of no use to you. You move it merely by way of experiment, and without any view to benefit your client; I am very sure of that."

The defendant being brought up in custody of the keeper of Newgate, Mr. Clifford complained bitterly of the language of the Chief Justice ^{10th June, 1799.} when the rule was granted, and delivered a very long address upon the illegality of the commitment, interspersed with many sarcastic remarks on the House of Lords, and the modern nobility by whom it is filled.

Lord Kenyon: "The learned counsel has drawn a picture of a monster established in power by the voice of the people, and then doing a great many horrid things—among others filling the House of Lords with a banditti. The learned counsel, it is true, did not use that word—but, 'persons who supersede the ancient nobility of the country.' I happen to be one of that number: of myself I will say nothing. But if we look back to the history of the country, and consider who were

Lord
Kenyon's
attack on
Lord-
Treasurer
Clifford and
the ancient
nobility.

made peers in former times, and what they were whose descendants are now called 'the hereditary nobility of the country;' if we look back to the reign of Charles II., in the letters which form the word CABAL, will the memory of the learned counsel, who seems to think virtues and vices hereditary, furnish him with the names of no persons who were then made peers, although they were not very likely to devolve virtues on the succeeding ages? From what has passed, I am called upon to vindicate the House of Lords. Their honour stands on so stable a ground, that no flirting of any individual can hurt them. The public feels that its liberties are protected by the two Houses of Parliament. If ever the time shall come that any malignant, factious, bad man shall wish to overturn the constitution of the country, the first step he will take, I dare say, will be to begin by attacking in this Court one or both of the Houses of Parliament. But all such petty attempts will have no effect upon the public mind; they will only recoil upon those who make them."

He then proceeded to lay down the sound rule that commitments for contempt by either House of Parliament could not be examined into by a court of law,

and the prisoner was remanded to Newgate.*
 Mr. Clifford's retaliation. Mr. Clifford published a report of the case with a postscript, in which he said,—

"The hereditary boasts one advantage over new nobility; from the very cradle its children are formed to the stations which they are destined afterwards to fill. Accordingly we seldom observe in our hereditary peers those pedantic notions of impracticable morality, or that boisterous impetuosity of manners, which some times accompany and disgrace even in the highest situations those who have been raised to them from the desk, merely on account of their industry and professional success."†

Lord Kenyon was much more fortunate in supporting the inquisitorial power of the two Houses of Parliament, and their right to order the publication of whatever they think necessary for the public service, although it may reflect upon individuals. After Hardy, Horne

Lord Kenyon laid down the true constitutional doctrine since affirmed by Act of Par-

* 27 St. Tr. 985-1078.

† This cousin of Lord-Treasurer Clifford was an admirable speaker, and

might have risen to the highest honours, but he died young from intemperance.

Tooke, and Thelwall had been tried for high treason and acquitted, a committee of the House of Commons was appointed to inquire into the condition of the country, and made a Report to the House, stating that evidence was adduced against them, showing "that they and their confederates were decidedly hostile to the existing government and constitution of this kingdom, and wished for the subversion of every established and legitimate authority." This report was ordered by the House to be printed, and was reprinted and published by a bookseller. Against him an application was made, on behalf of Horne Tooke, to the Court of King's Bench, for a criminal information. The defendant made an affidavit of the facts, and denied all malicious intention whatsoever. Erskine for the prosecution contended that the House of Commons, though they might inquire, could not lawfully publish the result of their inquiries to the detriment of any individual, and that at any rate the defendant could not justify the republication of a libel for his own advantage, because it had been published by the House of Commons on pretext of the good of the community.

liament respecting the power of the two Houses to print and publish.

Lord Kenyon [without hearing the other side]: "This is an application for leave to file a criminal information against the defendant for publishing a libel; so that the application supposes that this publication is a libel. But the inquiry made by the House of Commons was an inquisition made by one branch of the Legislature, to enable them to proceed farther and adopt some regulations for the better government of the country. This report was first made by a Committee of the House of Commons, then approved by the House at large, and then communicated to the other House; there it is now *sub judice*; yet we are told that it is a libel on the prosecutor. It is impossible for us to admit that the proceeding of either of the Houses of Parliament is a libel; and yet that is to be taken as the foundation of this application. The King *v.* Williams, so much relied upon, was decided in the worst of times, and it has no application to

the present case. This is a proceeding by one branch of the Legislature, and therefore we cannot inquire into it. I do not say that we would never inquire whether the House of Commons has exceeded its jurisdiction; but acting within its jurisdiction, it cannot be controlled by us. An injunction by the House of Commons to stay proceedings in a common action between two individuals, we should treat as a nullity. But the House of Commons having the right to print and publish what they consider essential for public information, we cannot consider whether they have exercised that right properly on any particular occasion, and the individual who suffers from the exercise of it is without legal remedy."—*Laurence, J.*: "It is of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated, and they would be deprived of that advantage if no person could publish their proceedings without being punished as a libeller."*

Lord Kenyon, however, with great spirit and upon the soundest principles, would not suffer a peer under pretence of Parliamentary privilege to libel a fellow subject with impunity.

The Earl of Abingdon, having quarrelled with his attorney, delivered a most calumnious speech against him in the House of Lords, and then published it in a newspaper. The attorney indicted him for publishing the libel.

The trial coming on before Lord Kenyon at Westminster, the noble defendant appeared in Court as his own counsel. He modestly abstained from claiming to sit on the bench with the Chief Justice, but, remaining at the bar, he strenuously insisted on his right to be covered, because the Chief Justice and he were both peers and entitled to the same privileges.

Lord Kenyon.—"I do not sit on this seat as a peer; but being assigned by our Lord the King, as his Chief Justice, to hold pleas before him, out of respect to the sovereign of these realms and to the sovereignty of the law the noble Earl must be uncovered."

* 8 T. R. 293.

Rex v. Earl
of Abingdon.
Peer not
privileged
to publish
speech
delivered by
him in the
House of
Peers, with a
view to libel
an indi-
vidual.

The trial proceeded, and it was clearly proved that Lord Abingdon had sent his speech in his own hand-writing to the newspaper-office with a request that it might be published. Being called upon for his defence, he contended that the prosecution could not be supported, as the alleged libel was printed from the written speech which he himself had actually read in his place in Parliament.

Lord Kenyon: "Heaven forbid that we should seek to animadvert here upon a speech made in parliament. Parliament alone can inquire into the merits of a speech so made, and, if it deserves punishment, punish the offender. We inquire not respecting what the noble Earl did in the House of Lords, but what he did in Catherine Street in the Strand, when by his agent he delivered a paper in his own hand-writing containing most calumnious charges against the prosecutor, and requested that it might be printed and published. This was the act of a simple individual seeking to gratify his malice, and he is criminally responsible for it, although he happens likewise to be an Earl."

The defendant was found guilty, and most justly sentenced to imprisonment.*

Lord Kenyon meritoriously checked the doctrine which was becoming too rampant, that a man is liable for the consequences, however remote or unforeseen, which can be traced to his acts. The proprietor of a theatre having brought an action against a critic for a libel on one of his performers, alleged in the declaration that the defendant, "contriving to terrify and deter a certain public singer called Gertrude Elizabeth Mara, who had been retained by the plaintiff to sing publicly for him, wrote and published a certain malicious paper, &c., by reason

Doctrine of consequential damage.

* 1 Espinasse, 226. In the year 1843 I tried unsuccessfully to carry a clause in my Libel Bill, to exempt from prosecution or action a true account of speeches in parliament published *bona fide* for the information of the public; yet I have been severely censured for

not deciding as a judge that neither prosecution nor action can be maintained for a true account in a newspaper of anything said at any public meeting. This would, indeed, have been "Judge-made law."

whereof the said Gertrude Elizabeth Mara could not sing without great danger of being assaulted and ill-treated, and was prevented from so singing, and the profits of the theatre were rendered much less than they otherwise would have been." Madame Mara, being called as a witness, did swear that on account of the obnoxious article she did not choose to expose herself to contempt, and had refused to sing.

Lord Kenyon [stopping the defendant's counsel]: "The injury is much too remote to be the foundation of an action. An action might equally be supported against every man who circulates the bottle too freely and intoxicates an actor, *per quod* he is rendered incapable of performing his part upon the stage. The loss here arises from the vain fears and caprice of the actress. This action is to depend, forsooth! on the nerves of Madame Mara!"*

He likewise did good service in discountenancing the rapacity of surveyors. One of these gentlemen insisted that he was entitled to five per cent. upon all the expenditure in erecting and finishing a house for his trouble in paying the tradesmen's bills, and called several witnesses to prove that this was the usual charge of surveyors.

Rescue of
the public
from sur-
veyors.

Lord Kenyon: "The plaintiff states in his declaration his demand to be 'as much as he reasonably deserves' for his work and labour. Does he *reasonably* deserve to have this exorbitant demand? As to the custom attempted to be proved, the course of robbery on Bagshot Heath might as well be proved in a court of justice. It ought not to be and it cannot be supported."

The plaintiff was nonsuited.†

Lord Kenyon showed a very laudable zeal to repress the very infamous practice of some fashionable journals in his time to invent scandalous stories of persons in "high life." The *Morning Post* published a paragraph referring to Lady Elizabeth Lambert, a very beautiful

Lord Kenyon's
laudable
zeal against
manu-
facturers of
slander.

* *Astley v. Harrison*, Peake, 256.

† *Updall v. Stewart*, Peake, 255.

and accomplished girl of seventeen, whose character was unspotted and whose manners were irreproachable, stating that "she had made a *faux pas* with a gentleman of the shoulder-knot." Lady Elizabeth brought an action for this calumny, suing by her mother, the Countess Dowager of Cavan, as her *prochein amie*. The defendant's counsel tried to palliate the case on the ground of inadvertence and misinformation, allowing that the young lady had never displayed the smallest sign of levity, and had always been the pride and joy of her friends.

Lord Kenyon: "It is seriously to be lamented that the very many cases which are brought, some of them civil and some criminal, should have no effect on persons who publish newspapers to stop the progress of this which everybody complains of. If it is to be stopped, it is to be stopped by the discretion, good sense, and fortitude of juries. Gentlemen, it is to you, and you only, that this lady can look for redress; and it is not her cause only which has been this day pleaded before you—it is the cause of injured innocence spread from one end of the kingdom to the other; and therefore if this lady is not to be protected, nay, if ordinary damages are to be given, and not such as shall render it perilous for men to proceed in this way, we are in an unpleasant situation indeed, and particularly so when we have heard it openly avowed in court by the proprietors and publishers of newspapers that their commodity is not suited to the public taste unless *capsicum* is put into it—unless it be seasoned with scandal. I do not believe that in all the cases of libel ever canvassed, one so criminal as this is to be met with. You, gentlemen, are bound to guard the feelings of this injured lady; and what the feelings of injured innocence are every one must feel who is not an apostate from innocence himself. You, gentlemen, before you give your damages, will put yourselves into the situation of this injured lady, asking yourselves if those whom you are most bound by the laws of nature and of God to protect had been insulted in a similar manner, what damages you would have expected from a jury of your country."

The jury found a verdict for the plaintiff with 4000*l.* damages.

In actions for criminal conversation his ardent love

of morality blinded his judgment, prevented him from distinguishing the merits of each particular case, and led him to confound the principles of civil and criminal justice. On one occasion he said :—

Misled by
his love for
morality.

“My endeavours, I confess, to deter men from the enormous crime of adultery have hitherto proved ineffectual. But judges and juries are appointed to redress private and public wrongs; we are the guardians of the morals of the people, and we ought never to relax in our efforts to prevent the commission of crimes which strike at the root of religion and of domestic purity and happiness. It is said here that the defendant is not able to pay large damages, but this is an aggravation of his misconduct. Is his poverty to tempt him to injure unfortunate husbands? but it will if it enables him to do so with impunity. I advise you to give ample damages, that the vice may be suppressed.”

In another case in which the wife of the plaintiff (as he knew when he married her) was a wanton, it actually came out on cross-examination that she not only painted her face, but that she exposed her person most indecently :—

Lord Kenyon : “I see no ground here for cutting down the damages. Such things as are imputed to the plaintiff's wife are not uncommon among ladies of quality, and no mercy should be shown to the defendant (General Gunning), who is an abominable, hoary, degraded creature.”

In the famous case of *Howard v. Bingham*, he said :—

“I had not been long in a court of justice before I felt that I should best discharge my duty to the public by making the law of the land subservient to the laws of religion and morality; and therefore, in various cases that have come before me, when I saw a considerable degree of guilt, I have pressed the judgment of juries to go along with me in enforcing the sanction of religion and morality by the heavy penalties of the law; and I have found juries co-operate with me in trying how far the immorality of a libertine age would be corrected by letting all parties know that they best consult their own interest by discharging those duties they owe to God and society.”

Such speeches gained him great popularity with the vulgar, but made the judicious grieve. Even Lord Eldon, when Chief Justice of the Court of Common Pleas (although strongly disposed to support him), said on the trial of an action for seduction :—

“I gladly lay hold of this opportunity of disburdening my mind of an opinion that has long lain heavily upon me, as it is directly in opposition to the judgment of Lord Eldon's protest against Lord Kenyon's ultraism. one of the most learned judges and best of men that ever sat in Westminster Hall, a man to whom the laws of this country and (what is of more consequence) the public morals are as much indebted as to any man among the living or the dead. But having offered this tribute to truth, I am bound by my oath to give my own opinion, that, in a civil action of this nature, the jury are bound by law to consider, in awarding the amount of damages, not what may be an adequate punishment to the defendant for his criminality, but what will be a sufficient compensation to the plaintiff for the injury complained of.”

Lord Kenyon likewise carried on a furious war against the destructive vice of *gaming*, which he declared to be mischievously prevalent in both sexes. He recommended that fashionable gaming establishments should be indicted as common nuisances, adding this threat, which is said to have caused deep dismay, “If any such prosecutions are fairly brought before me, and the guilty parties are convicted, whatever may be their rank or station in the country, though they may be the first ladies in the land, they shall certainly exhibit themselves in the pillory.”

This ungallant attack upon the fair sex roused a chivalrous defence from the Earl of Carlisle, who described the sad consequences arising from the tribunals of justice being occupied by “legal monks, utterly ignorant of human nature and of the ways of men, who were governed by their own paltry prejudices, and thought they must be virtuous in proportion as they were coarse and ill-mannered.”

Lord Kenyon cared nothing for any of these invec-
 tives, except the imputation of being a "legal
 monk." This stuck to him very fast, and he
 frequently complained of it. When making
 any observation to the jury which he thought
 very knowing as well as emphatic, he would
 say :—

"But, gentlemen, you will consider how far this is entitled to any weight, coming from a *legal monk*; for a great discovery has been made, that the Judges of the land, who are constantly conversant with business, who see much more of actual life on their circuits and in Westminster Hall than if they were shut up in gaming-houses and brothels, are only *legal monks*."

On another occasion he said :—

"Somebody tells us that the Judges are *legal monks*—that they know nothing of the world. What is the world? It is necessary to define terms, in order to know what the world is, and what is meant by this knowledge of the world. If it is to be got by lounging, like young men of fashion, about Bond Street or at gaming-tables, or at Newmarket, or in private houses of great men, or in brothels, I disavow being acquainted with it. But surely something of what may be called a knowledge of the world *quicquid AMANT* homines*, may be contained in courts of justice."

It is said that he went on addressing grand juries on the circuit in this strain, till Lord Carlisle threatened to bring him before the House of Lords for a breach of privilege.

His indiscreet impetuosity of manner and his want of *tact* sometimes subjected him to the triumph of ribaldry and rudeness. In prosecutions for blasphemy, by at first interrupting the defendant's counsel without reason, he was beaten, and he afterwards allowed an open reviling of our holy religion, which he ought peremptorily to have stopped. "Christianity is certainly

By his hot temper, betrayed into the toleration of insolence.

* Sic.

parcel of the law of England" in this sense, that openly to insult its Divine Author is a misdemeanor which is punishable when committed, and which judges are justified in preventing. Yet Mr. Stewart Kyd, who called upon the prosecutor to produce "a certain book called the Bible," after one or two small victories to which he was strictly entitled, was very improperly permitted to ridicule and stigmatize at great length the most sacred truths of the Gospel.

On another occasion, John Horne Tooke, taking advantage of the Chief Justice's hasty temper, succeeded in acting such a scene of insolence as no other Judge would have endured. At the Westminster election, in 1788, Mr. Fox, having a large majority on the poll, was returned as duly elected, but Horne Tooke, the unsuccessful candidate, presented a petition against him. This being referred to a select committee under the Grenville Act, was voted "frivolous and vexatious." Mr. Fox was thus entitled to his costs, which were taxed at 198*l.* 2*s.* 6*d.*, and payment of this sum being refused, an action was brought to recover it. The statute provided that, on the trial of such an action, no evidence should be necessary or receivable beyond the resolution of the committee and the taxation of costs verified by the signature of the Speaker of the House of Commons. Horne Tooke now appeared as his own counsel. Erskine, for the plaintiff, that he might give his opponent no topics to dilate upon, merely said, with his usual discretion, "I am forbidden by the Act of Parliament to enter into any discussion of the merits of this case, or anything relating to them. I will, therefore, merely put in the statutable evidence to entitle Mr. Fox to your verdict for the sum of 198*l.* 2*s.* 6*d.*" This evidence he gave in the course of two minutes, and said, "This, my Lord, is my case."

Lord Chief
Justice
Kenyon
kicked by
John Horne
Tooke.

Lord Kenyon, although he had been told that the defendant was to attend as his own counsel and to make a "*terrible splash*," said, in a sharp, contemptuous tone, "Is there any defence?"

Horne Tooke [taking a pinch of snuff, and looking round the Court for a minute or two]: "There are three efficient parties engaged in this trial—you, gentlemen of the jury, Mr. Fox, and myself, and I make no doubt that we shall bring it to a satisfactory conclusion. As for the Judge and the Crier, they are here to preserve order; we pay them handsomely for their attendance, and, in their proper sphere, they are of some use; but they are hired as assistants only; they are not, and never were, intended to be the controllers of our conduct. Gentlemen, I tell you there is a defence, and a very good defence, to this action, and it will be your duty to give effect to it."

He then began a long narrative of the last Westminster election, and, without any interruption, had come to what he called the financial part of it, stating that Lords of the Treasury were expected to pay 200*l.* a piece, and those in higher situations more, according to their salaries. At last, Lord Kenyon burst out:—

"Mr. Horne Tooke, I cannot sit in this place to hear great names and persons in high situations *calumniated* and *vilified*—persons who are not in this cause—persons who are absent and cannot defend themselves. A court of justice is not a place for *calumny*; it can answer no purpose; you must see the impropriety of it, and it does not become the feelings of an honourable man."

H. T. [again taking snuff]: "Sir, if you please, we will settle this question between us now in the outset, that I may not be liable to any more interruptions."

C. J.: "Lord Lovat brought forward offensively the names of persons of great respectability, and he was stopped by the House of Lords. The Chancellor informed him that it was indecent to do so, and that a man of his station ought to refrain from such things. You are in the wrong path, Mr. Horne Tooke."

H. T.: "I am persuaded that I shall be able very easily and very shortly to satisfy you that I am not in the wrong path, and it is more desirable that I should do so now, because it is the path which I most certainly mean to pursue, and will not be diverted from. You know (at least you ought to know), and I acknowledge, that

if, under the pretence of a defence in this cause, I shall wantonly and maliciously say or do any word or thing which would be punishable by the laws of the land, if said or done by me wantonly and maliciously anywhere else, I shall be equally liable to prosecution and punishment by the same laws and in the same manner for what I shall say here. But, Sir (taking another pinch of snuff, and lowering his voice, so as effectually to fix the attention of the audience), you have made use of some words which I am willing to believe you used in a manner different from their usual acceptation. You spoke of *calumniating* and *vilifying*. Those words, Sir, usually include the notion of *falsehood*. Now, I presume you, Sir, did not mean them to be so understood. I am sure you did not mean to tell the jury that what I said was *false*. By *calumny* you only meant something *criminatorious*—something injurious to the character of the person spoken of—something that he would not like to hear, whether true or false."

C. J.: "Certainly, Mr. Horne Tooke; certainly."

H. T. [with an affectation of good nature]: "Well, I thought so; and, you see, I was not desirous to take advantage of the words to impute to you any wrong meaning or intention; because, had you really intended *falsehood* in the word *calumny* your Lordship would have grossly *calumniated* me. I have spoken nothing but the truth, as, I believe, you know, and which I am able and willing to prove. In one thing I go farther than you do, and am stricter than you are. I think it hard that any persons, whether in a cause or out of a cause, should at any time *unnecessarily* hear what is unpleasant to them, though true. This rule I mean to observe. At my peril I shall proceed, and I expect to meet with no farther interruption from your Lordship."

Having thus gained a complete mastery over the Chief Justice, he proceeded to waste the public time most shamefully, and to make many observations which ought to have been stopped, and with discretion and firmness might easily have been stopped, by the Judge. Thus he ridiculed the prevailing notion of "the independence of the judges:"—

"When anything peculiarly oppressive is now-a-days to be done, we have always a clatter made about the *judicial independence* with which we are now blessed. My own belief is, that the Judges are now much more dependent on the Crown and much less dependent on the people than in former times, and generally speaking, they

were certainly more independent in their conduct. They then sat on the bench, knowing they might be turned down again to plead as common advocates at the bar; and indeed it was no uncommon thing in those days to see a counsel at the bar brow-beaten and bullied by a Chief Justice on the bench, who in a short time after was to change places with the counsel and to receive in his own person the same treatment from the other in his turn. Character and reputation were then of consequence to the Judges, for if they were not well esteemed by the public, they might be reduced to absolute destitution; whereas if they were sure of being well employed on returning to the bar, dismissal from their poorly paid offices was no loss or discredit, and they might set the Crown at defiance. Now they are completely and for ever independent of the people, and from the Crown they have everything to hope for themselves and their families. Till the corrupt reign of James II., no common law Judge was ennobled. Chief Justices Coke and Hale, infinitely greater lawyers and abler men than any of their successors in our time, lived and died commoners. Who was the first judicial Peer?—the infamous Judge Jeffreys. But in his campaign in the West, and on other occasions, he had done something to deserve and to illustrate the peerage. Now a-days the most brilliant apprenticeship to the trade of a Peer is to carry a blue bag in Westminster Hall! This suddenly leads to riches, and the lawyer suddenly rich is made a Baron; whereas the fact of some particular individual of suspicious character being all of a sudden flush of money who was never known to have any before, often in the good old times led to the certain detection of the thief."

He then, to show how badly justice was administered, told a long story of a prosecution which he had instituted against some rioters at the Westminster election being defeated by the single circumstance of his counsel having entered the court a few minutes after nine in the morning, the Chief Justice having ordered them all to be acquitted for want of prosecution. Mr. Garrow here interposed, and by stating the true facts of the case, showed that Mr. Tooke, his counsel, attorney, and witnesses, had all been guilty of gross negligence, and that the Chief Justice had shown upon that occasion great patience and indulgence:—

H. T.: "There can be no doubt at all but that your Lordship

will always find some one in your own Court willing and ready to get up and recommend himself to your favour by a speech in your defence. I should have been surprised if it had not been the case now; but I must rather thank Mr. Garrow, for he has given me time to breathe awhile."

C. J.: "I want no defence, Sir; I want no defence, no defence. What has been said against me rather excites my compassion than my anger. I do not carry about me any recollection of the trial alluded to, or any of its circumstances."

H. T.: "I cannot say that I *carry about me anything* in consequence of it. I *carry about me* something *less*, by all the money which it took out of my pocket. Although Mr. Garrow has jumped up to contradict me, the affair happened exactly as I stated it. I heard him with much pleasure, for, as I said, I wanted to breathe. But we may have a different House of Commons, to consist of the real representatives of the people, of whom I may happen to be one, and I pledge myself now that I will, in my place there, call you, my Lord, to a proper account for your conduct that day, and Mr. Garrow may reserve his justification of your Lordship's conduct till that time, when I fear you will stand greatly in want of it. Now, gentlemen, having proved to you how a Judge may be made courteous and quiet, and may be taught to confine himself to the discharge of his proper duties in this place, I shall conclude by asking you, who alone have anything to do with the verdict, whether you think it fair that I should pay the costs incurred by Mr. Fox as candidate for Westminster, and you will well and truly try that which is the true and only issue between us."

C. J.: "Gentlemen, you are bound by your oaths 'well and truly to try this cause,' and the question is, whether by the law of the land the defendant is bound to pay the plaintiff this sum of 198*l.* 2*s.* 6*d.* Now, gentlemen, by the law of the land, if the petitioner refuses to pay the costs of an election petition, voted frivolous and vexatious, when duly taxed as the Act directs, he may be brought before a court of justice and compelled to do so. If you believe the evidence (which is not contradicted), you have such a case before you, and you will 'well and truly have tried this cause' by finding a verdict for the plaintiff for the sum demanded."

Nevertheless, several of the jury had been much captivated by Horne Tooke's eloquence, and they cared very little for the direction of a Judge who had suffered himself to be so insulted. Therefore it was not until after a struggle of four hours and twenty minutes that

they were induced to concur in finding a verdict for the plaintiff.* If Lord Mansfield had presided on this occasion, without ever having been angry or excited, he would have put a speedy end to such attempts at ribaldry, and Horne Tooke would have left the court not only defeated, but disgraced.

I cannot justly conclude my notice of Lord Kenyon's judicial decisions, without pointing out a few of them in which he was egregiously wrong: An application was made to the Court of King's Bench for a criminal information against the printer of a newspaper. In this newspaper had appeared the following paragraph "of and concerning" the prosecutor, the then Earl of Lonsdale, who, from being engaged in constant litigation with all his neighbours, had the reputation of being "the greatest *law Lord* in England":—

"The painters are much perplexed about the likeness of the Devil. To obviate this difficulty concerning His Infernal Majesty, PETER PINDAR has recommended to his friend OPIE the countenance of LORD LONSDALE."

Now, this impudent attack, however indecorous, was hardly sufficiently grave to be made the foundation of a common action or indictment, but was wholly unfit for the special interference of the Court of King's Bench—which is only to be invoked in cases of real importance. Erskine accordingly thought that he should laugh it out of Court:—

"The noble Earl can only apply to your Lordships from a sense not of wounded character but of *wounded beauty*—*spretæ injuria formæ*. There is no hidden malice in the writer—he does not recommend that this portrait of the devil should be painted *with horns*."

Lord Kenyon: "The tongue of malice has never said that."

Erskine: "True, my Lord, and nothing could be meant but a comparison of bodily appearance, without any insinuation that

* Townsend, 59.



there was a mental likeness. And here, my Lords, without any disrespect to the noble prosecutor, I must be allowed to say that the paragraph is not a libel on him, but on the devil. That great personage would doubtless apply to your Lordships for protection had it not been for the maxim that 'those who apply to your Lordships must come into court with *clean hands*.' Although Lord Lonsdale may reckon himself a very handsome man, he should recollect that to liken his countenance to that of the devil is a high compliment. In appearance he falls greatly short of the devil, and therefore he ought to have been much flattered by the comparison. I would (though a poor man), for the sake of my family, give Opie or Fuseli one hundred guineas for a likeness of myself verifying the description of his infernal majesty in Milton :—

‘He above the rest
In shape and gesture proudly eminent,
Stood like a tower; his form had not yet lost
All her original brightness, nor appeared
Less than archangel ruined, and the excess
Of glory obscured.’

“The devil was still handsome, even in the most unpromising masquerade, when he had entered the body of a serpent. In addressing Eve, we are told ‘pleasing was his shape and lovely.’ Why, then, should Lord Lonsdale be afraid that the devil depicted with the features of his Lordship must excite disgust? But, my Lords, the paragraph is mere pleasantry, quite unsuited to your Lordships’ notice.”

Lord Kenyon : “I am of opinion that we should protect the characters of individuals from ridicule and contempt. We must abide by the rules which the Court has laid down, and not be led away by the brilliancy and imagination of an advocate. Let the rule be made absolute.”

The puisnes, who had not been consulted before this judgment was pronounced, looked aghast. From their demeanour during Erskine’s speech they were supposed to be on his side, but they remained silent.

In *Haycraft v. Creasy* Lord Kenyon was very properly overruled by his brother judges, and the mortification which he suffered was supposed to have occasioned his death. The action was brought by a shopkeeper against a credulous old gentleman for having given a deceitful representation

Lord
Kenyon
overruled in
Haycraft v.
Creasy.

of the character and circumstances of a young lady of the name of Robinson, whereby the plaintiff had been induced to sell to her a large quantity of goods on credit, the price of which he had lost. The defendant having, like many others, been deceived by her arts, and really believing that what he said was true, told the plaintiff that she was a lady of great fortune and heiress of the estate of Fascally, in the county of Perth, and that she was not only respectable herself, but nearly connected with some of the highest families in Scotland. In truth she was a mere adventuress, and swindled all that would trust her. Law, for the defendant, contended that the action could not be maintained, as there was no *mala fides* to support it, and to make him liable without actual *deceit* would be to treat him as *surety* for Miss Robinson without any written guarantee.

Lord Kenyon: "The Attorney-General relies on the Statute of Frauds. To this I shortly reply by saying that the Statute of Frauds has nothing to do with this case. The defendant is sued, not as surety for Miss Robinson, but for stating respecting her that which was not true, and which he had the means of knowing, and must be supposed to have known, was not true, whereby a damage has been suffered by the plaintiff. If the present action cannot be supported, I have now for twelve years been deceiving the people of this country. Am I now, when perhaps from years the progress of my intellect may be retrograde, to unsay what I have said so often? Where can I go to hide my head if this point shall now be decided otherwise? What can I say to the people of this country? The ground I go upon is this: Did the defendant assert to be true that which he did not know to be true? This I consider sufficient evidence to support the charge of fraud. It may not amount to moral turpitude, but it is, in my opinion, sufficient to constitute legal fraud, and legal fraud is, in my opinion, enough to support an action of deceit."

Grose, Lawrence, and Le Blanc, Js., however, on the assumption that the defendant was a dupe, clearly held that he could not be made liable in this form of action, which supposed that the defendant had stated what he

knew to be false, or that, from some bad motive, he had stated as true facts which were untrue, and the truth of which had not been investigated. As his brethren proceeded *seriatim* in this strain, the Chief Justice's face showed the most terrible contortions; and when they had finished he exclaimed:—

“ Good God ! what injustice have I hitherto been doing ! What injustice have I been doing ! ”

A gentleman who witnessed the scene, says :—

“ It was visible to every person in court that this ejaculation was not uttered in the penitent voice of regret for any injustice which he might unconsciously have done from a mistake of the law, but in the querulous tone of disappointed pride, from finding that the other judges had presumed to think for themselves, and to question the supremacy of his opinion.”*

No case of witchcraft having ever come before Lord Kenyon, we do not certainly know his opinions upon this subject, but he was probably sufficiently enlightened to have held that the statutes against it having been all expressly repealed, it could not be dealt with by the criminal courts as a temporal offence. He was, however, enthusiastically devoted to the doctrine that, although the statutes against *forestalling* and *regrating* had “ in an evil hour ” been all expressly repealed, any such offence was still a misdemeanor at common law, and deserved to be punished with exemplary severity. Dearth in bad seasons he imputed to the combinations of farmers and the speculations of corn merchants. Buying provisions to resell to the consumers he allowed to be legitimate commerce, as the farmer could hardly sell the produce of his farm by retail; but any buying of provisions with a view to resell to a dealer at an advanced price he declared had a direct tendency to

Lord Kenyon's fury against forestallers and regraters.

* Note-book of a retired Barrister.

deprive the poor of the necessities of life, and therefore "blinked upon murder." The notion that the price of commodities is regulated by the proportion between the supply and the demand, he thought was only fit to be entertained by democrats and atheists. These sentiments were at the time highly popular, and contributed to raise his reputation as a great judge.

The first case in which he prominently propounded them was the *King v. Waddington*,* in which he granted a criminal information against the defendant for entering into forehand bargains with hop-growers to buy from them at a fixed price all the produce of their hop-gardens for a year. After a verdict of guilty, the defendant was brought up for judgment, and the legality of the conviction being questioned, Lord Kenyon said:—

"It has been contended that if practices such as those with which the defendant stands charged are to be deemed criminal and punishable, the metropolis would be starved, as it could not be supplied by any other means. I by no means subscribe to that position. I know not whether it be supplied from day to day, from week to week, or how otherwise; but this is to me evident, that in whatever manner the supply is made, if a number of rich persons are to buy up the whole or a considerable part of the produce from whence such supply is derived, in order to make their own private and exorbitant advantage of it to the public detriment, it will be found to be an evil of the greatest magnitude; and I am warranted in saying that it is a most heinous offence against religion and morality,* and against the established law of the country. So far as the policy of this system of laws has been called in question, I have endeavoured to inform myself as much as lay in my power, and for this purpose I have read Dr. Adam Smith's work, and various other publications upon the same subject, though with different views of it. I do not pretend to be a competent judge in this conflict of public opinion, though I cannot help observing that many of those who have written in support of our ancient system of jurisprudence, the growth of the wisdom of man for so many ages, are not, as they are alleged by some to be, men

* 1 East, 143, 166.

writing from their closets without any knowledge of the affairs of life, but persons mixing with the mass of society and capable of receiving practical experience of the soundness of the maxims they inculcate."

The defendant was punished by imprisonment and a heavy fine.

But Lord Kenyon's most elaborate and most applauded attack against forestallers and regraters was on the trial of an eminent corn merchant of the name of Rusby, who stood indicted before him at Guildhall, for having bought a quantity of oats, and having resold them to another corn merchant at a profit in the course of the same day. Thus, in a most impassioned tone, and with an assumption of peculiar solemnity, he summed up the evidence :—

"It frequently becomes the duty of juries in this place to decide causes where the interests of individuals are concerned, but a more important duty is imposed upon you to-day. This cause presents itself to your notice on behalf of all ranks, rich and poor, but more especially the latter. Though in a state of society some must have greater luxuries and comforts than others, yet all should have the necessities of life; and if the poor cannot exist, in vain may the rich look for happiness or prosperity. The legislature is never so well employed as when they look to the interests of those who are at a distance from them in the ranks of society. It is their duty to do so; religion calls for it; humanity calls for it; and if there are hearts not awake to either of those feelings, their own interest would dictate it. The law has not been disputed; for though *in an evil hour* all the statutes which had been existing above a century were at one blow repealed, yet, thank God, the provisions of the common law were not destroyed.' The common law, though not to be found in the written records of the nation, yet has been long well known. It is coeval with civilised society itself, and was formed from time to time by the wisdom of mankind. Even amongst the laws of the Saxon are to be found many wise provisions against forestalling and offences of this kind; and those laws laid the foundation of our common law. Speculation has said that the fear of such an offence is ridiculous; and a very learned man—a good writer—has said 'you may as well fear witchcraft.' I wish Dr. Adam Smith

had lived to hear the evidence of to-day, and then he would have seen whether such an offence exists, and whether it is to be dreaded. If he had been told that cattle and corn were brought to market, and there bought by a man whose purse happened to be longer than his neighbour's, so that the poor man who walks the streets and earns his daily bread by his daily labour could get none but through his hands, and at the price he chooses to demand; that it had been raised 3*d.*, 6*d.*, 9*d.*, 1*s.*, 2*s.*, and more a quarter on the same day, would he have said there is no danger from such an offence? Gentlemen, we are not 'legal monks,' as was said in another place, but come from a class of society that, I hope and believe, gives us opportunities of seeing as much of the world, and that has as much virtue amongst its members as any other however elevated. It has been said that in one county—I will not name it—a rich man has placed his emissaries to buy up all the butter coming to the market; if such a fact does exist, and the poor of that neighbourhood cannot get the necessaries of life, the event of your verdict may be highly useful to the public.*

A verdict of guilty being instantly pronounced, Lord Kenyon said—"Gentlemen, you have done your duty, and conferred a lasting obligation on your country." The defendant was sentenced to a heavy fine and long imprisonment.

The cry was then as strong for protection against forestallers as it has more recently been for protection against foreign importation; and so general was the agitation that corn merchants were in great danger of being torn to pieces by judge-led mobs. I am ashamed to say that most of the puisne judges participated in the hallucination of the Chief Justice of the King's Bench, insomuch that Sydney Smith thus wrote in his old age:—

"This absurdity of attributing the high price of corn to the combination of farmers and the dealings of middle-men, was the common nonsense talked in the days of my youth. I remember when ten judges out of twelve laid down this doctrine in their charges to the various grand juries on their circuits."

* Peake, N.P. Cas. 189.

CHAPTER XLV.

CONCLUSION OF THE LIFE OF LORD KENYON.

LORD KENYON had been very temperate in his diet, and had enjoyed uninterrupted health till he entered his 70th year. He then began to show symptoms of decay, which some attributed to his defeat in *Haycraft v. Creasy* and some to the dangerous illness of his eldest son. The Chief Justice was exceedingly amiable in all the relations of domestic life, and to this promising young man, who was expected to be the heir of his vast accumulations, he was particularly attached.

In the autumn of 1801, there was imposed upon him the melancholy duty of closing the eyes of him from whom he had expected that the pious office would be performed for himself. When gazing into the open tomb of his first-born, he is said to have exclaimed—"It is large enough for both."

On the first day of next Michaelmas Term the Chief Justice returned to his Court a sorrow-stricken, heart-broken man. He was hardly able to hold up his head; not even a "*regarding*" case from the Oxford circuit could excite him; and as soon as Term was over, leaving the *Nisi Prius* business to be done by Mr. Justice Le Blanc, he went into Wales, in the hope of being recruited by the air of his native mountains. He rallied a little, and came back to London on the approach of Hilary Term; but he was only able to take his seat in Court for a single day.

Lord
Kenyon's
career about
to close.

A.D. 1801.
Death of his
eldest son.

Lord
Kenyon's
last illness.

As a last resource he was advised to try the waters of Bath. All would not do. The appointed hour for the termination of his career was at hand. He had now an attack of black jaundice, and it was found that his constitution was entirely exhausted. For several weeks he lay in bed, taking hardly any sleep or

A.D. 1802.
His death
and burial.

nourishment. However, he suffered little pain; and having retained his mental faculties to the last, on the 4th of April, 1802, he expired, perfectly resigned to the will of God, and gratefully expressing his sense of the many blessings which he had enjoyed. His remains were conveyed to the family cemetery in the parish of Hanmer, and

there deposited in the same grave with those of his beloved son. A splendid monument has been erected to his memory, containing a minute enumeration of his offices, and of his virtues. But a more simple and more touching tribute was paid in a letter from his second son,—to whom descended with his title his more amiable qualities:—

“He has left a name to which his family will look up with affectionate and honest pride, and which his countrymen will remember with gratitude and veneration as long as they shall continue duly to estimate the great and united principles of religion, law, and social order; no Welshman ever exhibited more eminently two traits of Cambria—warmth of heart and sincerity of character.”

Touching
praise of
him by his
second son.

Anxious to suppress nothing that has been said in his praise, I add that the following character of his countryman, the learned civilian Sir Leoline Jenkins, was declared by a respectable writer to be equally applicable to the Cambrian Chief Justice of England:—

Character of
Sir Leoline
Jenkins
applied to
him.

“Impartial in the administration of justice, without respect of persons or opinions, he was not only just between man and man in all ordinary cases, but also where his intimate friend,

his patron, his enemy, or his own interest interfered; for in a word, he seemed to have loved justice as his life and the laws as his inheritance, and acted as if he always remembered whose image and commission he bore, and to whom he was accountable for the equity of his decrees. He was a man of excellent piety and unaffected devotion; he did not use his religion as a cloak to cover or keep him warm, but was early acquainted with religious principles and practices, and through the whole course of his life he was a serious and sincere Christian, of a strong and masculine piety, without any mixture of enthusiasm or superstition."

I must, however, in the discharge of my duty as a biographer, discriminate between his merits and his defects, and having done so, I can by no means consent to his being placed in the first rank of English judges. That he was a truly religious and strictly moral man, might equally have been said of him had he, according to his original destination, spent his life as an attorney at Nantwich. When placed at the head of the common law as Chief Justice, he did, in the midst of some grumbling and sneering, command a considerable portion of public veneration. He was not only devoted to the discharge of his public duties and zealously desirous to do what was right, but his quickness of apprehension and his professional knowledge generally enabled him to come to a rapid and a sound decision in the various cases which he had to adjudicate. But he was far from being a scientific jurist; he could very imperfectly explain the rule of law by which he was governed, and when in private he was asked for his reasons, he would answer, "I vow to God that it is so."

He is said to have been a great favourite with common juries, and according to the slang of Westminster Hall, always to have carried off *the verdict*.* This was said to be because "he

Discrimination required in his biographer.

His popularity with common juries.

* i.e. that juries found upon the facts according to the opinion which he intimated to them. "His very failings won their liking; his prejudices were

never fired over their heads, and he knew how to hit the bird in the eye." But he never combated the prejudices of the jury. He even encouraged that universal prejudice of the lower orders against attorneys, by which I have frequently seen the administration of justice perverted. Although bred in an attorney's office and long aspiring no higher than to be an attorney, he seemed to think the whole order pettifoggers, and their occupation almost necessarily disreputable. Instead of restricting his animadversions to peccant individuals, he extended an angry suspicion to a whole class, containing many men as honourable as himself, and much his superiors in education and manners. He talked of striking an attorney off the roll as he might of dismissing a footman who had offended him. A naval officer having been arrested at a ball, Lord Kenyon at once jumped to the conclusion that this must have been by the orders of the plaintiff's attorney, saying that "it must be matter for consideration whether a practitioner who had so misconducted himself ought to remain on the rolls of the court." When a trial, expected to last the whole day, had unaccountably gone off, so that the following causes were struck out, the attorneys not having their witnesses in attendance, he advised that actions should be brought against all the attorneys for negligence.

"His hatred of dishonest practices," says a barrister who attended his court, "had lit up a flame of indignation in his breast, but it was an *ignis fatuus* which led him into error. He gave too easy credit to accusation, and formed an opinion before he suffered his judgment to cool. He decided while under the influence of a heated temper, and often punished with unreflecting severity. The effect of this intemperate mode of administering

theirs; they with him loved to detect some knavish trick in an attorney; with him they held in pious horror the fashionable vices of the great, and the

faults in his address against taste and correct idiom were beauties in their ears." Townsend, vol. i. p. 65.

justice my memory recalls with painful recollection in the case of a Mr. Lawless, an attorney and an honourable member of that profession. He was involved in the general and groundless proscription of the day. Complaint was made to the Court against him for some imputed misconduct, grounded on an affidavit which the event proved was a mass of misrepresentation and falsehood; but it being on oath and the charges serious, it was thought sufficient to entitle the party applying to a rule to show cause why Mr. Lawless should not answer the matters of the affidavit. Natural justice would point out, and the practice of the Court was conformable to it, that he should be heard in answer before he was convicted. For that purpose a day is given by the rule on which the party is to show cause, during which time everything is considered as suspended. This indulgence was refused to Mr. Lawless. Lord Kenyon in addition to the common form of the Court's assent to the application 'take a rule to show cause,' added, 'and let Mr. Lawless be suspended from practising until the rule is disposed of.' He happened to be present in Court when this unexampled judgment was pronounced, and heard the sentence which led to his ruin. He rose in a state of the most bitter agitation: 'My Lord, I entreat you to recall that judgment; the charge is wholly unfounded; suspension will lead to my ruin; I have eighty causes in my office.' What was Lord Kenyon's reply to this supplicatory appeal to him? 'So much the worse for your clients, who have employed such a man! You shall remain suspended until the Court decides on the rule.' The rule came on to be heard at a subsequent day after the affidavits on the part of Mr. Lawless had been filed. The charges against him were found to be wholly without foundation, and the rule was accordingly discharged. Mr. Lawless was restored to his profession, but not to his character or peace of mind. He sank under the unmerited disgrace, and died of a broken heart."*

But although individuals might suffer from his precipitancy, Lord Kenyon's strong dislike of chicanery had a salutary effect upon the practice both of attorneys and barristers. Sham pleas, which had become much multiplied, were, by a threat to ask *who had signed them*, restrained to "judgment recovered," or "a horse given in satisfaction," and the misrepresentation of

Lord
Kenyon
serviceable
in repress-
ing petti-
fogging.

* Townsend vol. i. p. 65.

authorities in arguments at the bar was checked by a proposed rule of Court, requiring that "all cases should be cited on affidavit."

I ought gratefully to record that he was very kind to the students who attended the Courts. I cannot say that I ever heard (with one exception) of his inviting any of us to dinner, but I have a lively recollection that our box being near the bench at Guildhall,—while the counsel were speaking he would bring the record to us and explain the issues joined upon it which the jury were to try.

When placed at the head of the common law Lord Kenyon affected to talk rather contumeliously of the Equity Courts. A suitor against whom he had decided threatened to file a bill of discovery. "Go to Chancery!" exclaimed the Chief Justice, "*Abi in malam rem.*" Lord Thurlow meeting him soon after, said to him, "Taffy, when did you first think that the Court of Chancery was such a *mala res*? I remember that you made a *very good thing of it*. And when did solicitors become so very odious as I am told you now represent them? When they gave you briefs you did not treat them as such atrocious ruffians."

We have nothing to say of Lord Kenyon as an orator or statesman more than as a philosopher. He had no high opinion of Mr. Pitt, to whom he was indebted for his elevation—and he complained that this leader, even after being in office, professed a love for parliamentary reform, and actually carried through Fox's Libel Bill. He declared that he himself was a loyal subject—not a political partisan. He expressed the most unbounded admiration of the character of George III. This he made the subject of his constant eulogy in his addresses to grand juries on the circuit—and, it being contrary to etiquette for the bar

His kindness to students.

He is rebuked by Thurlow for despising the Court of Chancery and solicitors.

Lord Kenyon's eulogy on George III.

to be present on these occasions, so that the same address may be constantly repeated, he used to sound the royal praises nearly in the same language, and always to conclude with this quotation from Scripture—"Our good King may say with Samuel of old, 'Whose ox have I taken? Whose ass have I taken? Whom have I defrauded?'"

In consequence of this warm attachment, George III. had a high opinion of Lord Kenyon, notwithstanding the jokes about his bad Latin and his bad temper, and the subject of Catholic Emancipation arising, addressed to him the following letter:—

His opinion
given to
George III.
respecting
the Catholic
question.

"Queen's House, March 7, 1795.

"The question that has been so improperly patronized by the Lord Lieutenant of Ireland seems to me to militate against the Coronation Oath and many existing statutes. I have therefore stated the accompanying queries on paper, to which I desire the Lord Kenyon will, after due consideration, state his opinion, and acquire the sentiments of the Attorney-General on this most important subject."

The following was the reply:—

"Lord Kenyon received your Majesty's commands when he was in the country. He came immediately to town, and encloses what has occurred to him on the question. He has conferred with the Attorney-General, and believes there is not any difference in opinion between them. They are neither of them apprized what was the extent of the alteration meditated to be made in Ireland.

"Your Majesty's most obliged and dutiful subject,
"KENYON."

"So long as the King's supremacy, and the doctrine, discipline, and government of the Church of England are preserved as the National Church, and the provision for its ministers kept as an appropriated fund, it seems that any ease given to sectarists would not militate against the Coronation Oath or the Act of Union. Though the Test Act appears to be a very wise law, and in point of sound policy not to be departed from, yet it seems that it might be repealed or altered without any breach of the Coronation Oath or Act of Union."

Another interrogatory came from his Majesty to the Chief Justice :—

“The King is much pleased with the diligence shown by the Lord Kenyon in answering the question proposed to him, and wishes his further opinion on the state of the question in Ireland, as drawn up by a Right Reverend Prelate of that Kingdom, and on the Petition of the Roman Catholics.”

The response was rather oracular :—

“The Petition expresses apprehensions of ‘proscription, persecution, and oppression.’ All grounds of such apprehensions, if such there really are, may be safely removed,—if the late benefits which the Petition admits have not removed them,—without endangering the Established Church or violating the Coronation Oath.”

It was greatly to the credit of Lord Kenyon that he went so far in combating the mischievous notions that had been infused into the royal mind, and if the opinion then expressed had been acted upon at the time of the Irish Union, it would have saved a world of woe to the empire.

Lord Kenyon, like all the other judges of his day, highly approved of the severity of the penal code, and would have thought the safety of the state endangered by taking away the capital sentence from forgery,—or from stealing to the amount of five shillings in a shop. Yet he was not such a “hanging judge” as some of his colleagues. A barrister * once related the following anecdote in a debate in the House of Commons :—

“On the Home Circuit a young woman was tried for stealing to the amount of forty shillings in a dwelling-house. It was her first offence, and was attended with many circumstances of extenuation. The prosecutor came forward, as he said, from a sense of duty ; the witnesses very reluctantly gave their evidence ; and the jury still more reluctantly their verdict of *guilty*. The

* Edward Morris, Esq., afterwards a Master in Chancery.

Lord Kenyon for a severe penal code, but not a “hanging judge.”

Judge passed sentence of death. The unhappy prisoner instantly fell lifeless at the bar. Lord Kenyon, whose sensibility was not impaired by the sad duties of his office, cried out in great agitation from the bench, 'I don't mean to hang you! will nobody tell her I don't mean to hang her?' I then felt, as I now feel, that this was passing sentence not on the prisoner, but on the law."

Lord Kenyon very seldom wrote his judgments. In delivering them his language was sometimes forcible, but arranged without the slightest regard to the rules of composition. In spite of the softening efforts of his reporters in harmonizing his mixed metaphors, we have specimens of his style preserving a great share of its raciness. Thus he fortifies one of his favourite maxims, which Lord Eldon says was constantly in his mouth, *Amo stare supra antiquas vias**—"If an individual can *break down* any of those safeguards which the constitution has so wisely and so cautiously erected, by *poisoning* the minds of the jury at a time when they are called upon to decide, he will *stab* the administration of justice in its most vital parts." But some of the stories circulated respecting his historical allusions and quotations must have been exaggerations or pure inventions. Thus Coleridge in his 'Table Talk' relates that Lord Kenyon in addressing the jury in a blasphemy case, after pointing out several early Christians who had adorned the Gospel, added—"Above all, gentlemen, need I name to you the Emperor Julian, who was so celebrated for the practice of every Christian virtue, that he was called JULIAN THE APOSTLE?" So in the collection of legal anecdotes, entitled 'Westminster Hall,' the noble and learned Lord is represented as concluding an elaborate address, on dismissing a grand jury, with the following valediction:—"Having thus discharged your consciences, gentlemen, you may retire

Specimen
of Lord
Kenyon's
love of
mixed meta-
phors.

* Twiss's Life of Lord Eldon.

to your homes in peace, with the delightful consciousness of having performed your duties well, and may lay your heads upon your pillows, saying to yourselves, 'Aut Cæsar aut nullus.'" In exposing the falsehood of a witness he is supposed to have said, "The allegation is as far from truth 'as old Booterium from the Northern Main'—a line I have heard or met with God knows *where*"—[his mode of pronouncing *where*].*

Before parting with Lord Kenyon's public character, I ought to mention that although he never returned to poetry after his early flight during his apprenticeship, he left reports of cases begun by him while a student, and these being edited and published by his relation, Mr. Job Hammer, inscribe his name in the list of "noble and royal authors," but I cannot say that they were of much value to the profession, or that they confer great glory upon his order.

I have enlivened former Lives of Chancellors and Chief Justices by their *faciæ*—but I know nothing of this sort, either by books or tradition, attributed to Lord Kenyon, except his address to Mr. Abbott (afterwards Speaker and Lord Colchester). This pompous little man, while holding under him the office of Clerk of the Rules, was proceeding, as chairman of a committee of the House of Commons, to examine him very minutely upon the delicate subject of the perquisites of the Chief Justice. The offended Judge having demurred to answer any further, and being reminded in a solemn manner of the authority of the House of Commons, at last broke out, "Sir, tell the House of Commons that I will not be yelped at by my own turnspit." Of his other recorded sayings I can find nothing more pointed than that in complimenting Serjeant Shepherd, he said, "He has no rubbish in his head"—that a flippant observation being made by a

Lord
Kenyon's
reports.

His *faciæ*.

* Townsend, vol. i. p. 91.

witness respecting a letter supposed to come from a young lady, he said "Turn the minion out of court,"—and that when he detected the trick of an attorney to delay a trial, he said, "This is the last hair in the tail of procrastination, and it must be plucked out."

When not engaged in his judicial duties, Lord Kenyon led the life of a recluse. He occupied a large, gloomy house in Lincoln's Inn Fields, in which I have seen merry doings when it was afterwards transferred to the Verulam Club. I have often heard this traditional description of the mansion in his time—"All the year through, it is LENT in the kitchen, and PASSION WEEK in the parlour." A friend, by way of defending him, having said, "I am told he has wine in his cellar," another who had been complaining of his stinginess, answered, "But he never gives a bottle of it to any one," when Erskine exclaimed, "I must take his part now; for I have known him give a bottle of it to a dozen." Some one having mentioned that although the fire was very dull in the kitchen grate, the *spits* were always bright—"It is quite irrelevant," said Jekyll, "to talk about the *spits*, for *nothing* turns upon them." Although there was probably a good deal of exaggeration in these jests, there can be no doubt that Lord Kenyon deserved censure for the meanness of his mode of living, and his disregard of decent hospitality. The state conferred the liberal emoluments of Chief Justice upon him as a trustee so far as that he should support the dignity of his station—that he should bring together at his board the deserving members of the important profession over which he was appointed to preside—and that he should represent the country to illustrious foreigners who came to study our juridical institutions. Lord Kenyon's dinner-parties consisted of himself, Lady Kenyon, his children, and now and then an old attorney; and the very moderate weekly bills for

His penurious mode of life.

such a *ménage* being paid (which they were most punctually), the accumulations were vested in the three per cents., till they were sufficient to buy another Welsh farm. Lord Kenyon's hours would not well have suited fashionable company ; for, rising at six in the morning, he and all his household were in bed by ten at night. He is said to have built a comfortable house at Gredington to which he retired in the long vacation. Under the name of villa, he had a miserable tumble-down farmhouse at the Marsh Gate, about half a mile on this side of Richmond, which is still pointed out as a proof of his economy. The walls are mouldering, and by way of an ornamental piece of water may be seen near the door a muddy duck-pond. In Lord Kenyon's time it was guarded by a half starved Welsh terrier, which was elevated into a higher order of the canine race when the following lines were applied to the establishment :—

His villa at
Richmond.

“ Benighted wanderers the forest o’er
Cursed the saved candle and unopened door ;
While the gaunt mastiff growling at the gate
Affrights the beggar whom he longs to eat.”

To this place the family came regularly on Saturday evenings, after a slight repast in town,—bringing with them a shoulder and sometimes a leg of mutton, which served them for their Sunday dinner. On Monday morning the Chief Justice was up with the lark, and back in Lincoln's Inn Fields before the lazy Londoners were stirring. We have the following amusing account of one of these journeys from a barrister who was patronized by him :—

“ An old coach came rumbling along and overtook me on the road to London from Richmond. It was one of those vehicles that reminded me of a Duke or Marquis under the old régime of France, rivalling in indigence and want the faded finery of his wardrobe. Its coronet 'was scarcely discoverable, and its gildings

were mouldy; yet it seemed tenacious of what little remained of its dignity, and unwilling to subside into a mere hackney coach. I believe I might have looked rather wistfully at it (I was then a poor barrister, briefless and speechless, in the back rows of the court), when I perceived a head with a red nightcap suddenly pop out from the window, and heard myself addressed by name, with the offer of a cast to London. It was Lord Kenyon. He made the journey quite delightful by charming anecdotes of the bar in his own time—of Jack Lee, Wallace, Bower, Mingay, Howorth, the last of whom was drowned, he said, on a Sunday water-excursion in the Thames. The good old man was evidently affected by the regrets which his name awakened, and they seemed the more poignant because his friend was called to his account in an act of profanation. ‘But it was the sin of a good man,’ he observed, ‘and Sunday was the only day a lawyer in full business could spare for his recreation.’” *

The red nightcap had been worn to save his wig. He was curiously economical about the adornment of his head. It was observed for a number of years before he died, that he had two hats and two wigs—of the hats and the wigs one was dreadfully old and shabby, the other comparatively spruce. He always carried into Court with him the very old hat and the comparatively spruce wig, or the very old wig and the comparatively spruce hat. On the days of the very old hat and the comparatively spruce wig he showed his hat under the bench, and displayed his wig; but on the days of the very old wig and the comparatively spruce hat, he always continued covered. I have a very lively recollection of having often seen him sitting with his hat over his wig; but I was not then aware of the Rule of Court by which he was governed on this point.†

The rest of Lord Kenyon’s apparel was in perfect keeping with his *coiffure*. “On entering Guildhall,”

* Clubs of London.

† Till the middle of the last century the Chancellor is always represented with his hat on. In early times it was round and conical; and such was Lord Keeper Williams’s, although he was a bishop. In Anne’s reign three-cornered

hats came up. The black cap of the common law judges, which has remained unchanged for many ages, is square. With this they used always to be covered; but they wear it now only when passing sentence of death.

says Espinasse, "Pope's lines in the Dunciad came across me, and I quoted them involuntarily :—

'Known by the band and suit which Settle wore,
His only suit for twice three years and more.'

"Erskine would declare that he remembered the great coat at least a dozen years, and Erskine did not exaggerate the claims of the coat to antiquity. When I last saw the learned Lord, he had been Chief Justice for nearly fourteen years ; and his coat seemed coeval with his appointment to the office. It must have been originally black, but time had mellowed it down to the appearance of a sober green, which was what Erskine meant by his allusion to its colour. I have seen him sit at Guildhall in the month of July in a pair of black leather breeches ; and the exhibition of shoes frequently soled afforded equal proof of the attention which he paid to economy in every article of his dress."

In winter he seems to have indulged in warmer garments ; for James Smith, author of the "Rejected Addresses," describing him in Michaelmas Term, says—"But we should not have his dress complete were we to omit the black *velvet smalls* worn for many years, and threadbare by constant friction, which he used to rub with most painful assiduity when catechising the witness. The pocket handkerchief found in the second-hand silk waistcoat which he bought from Lord Stormont's valet being worn out, he would not go to the expense of another, and, using his fingers instead, he wiped them upon his middle garment, whether of leather or of velvet."

According to other accounts this change in his habits did not begin till the imposition of the Income Tax by Mr. Pitt. Said Rogers the poet, "Lord Ellenborough had infinite wit. When the Income Tax was imposed, he stated that Lord Kenyon (who was not very nice in his habits) intended in consequence of it, to lay down his pocket handkerchief."*

If we can believe his immediate successor, who had a fair character for veracity, Lord Kenyon studied economy

* Table Talk of Samuel Rogers, p. 196.

even in the hatchment put up over his house in Lincoln's Inn Fields after his death. The motto was certainly found to be "MORS JANUA VITÆ"⁴—this being at first supposed to be the mistake of the painter. But when it was mentioned to Lord Ellenborough, "Mistake!" exclaimed his Lordship, "it is no mistake. The considerate testator left particular directions in his will that the estate should not be burdened with the expense of a *diphthong*!"

His will directing his executors to avoid the expense of a diphthong.

Accordingly he had the glory of dying very rich. After the loss of his eldest son, he said with great emotion to Mr. Justice Allan Park, who repeated the words soon after to me—"How delighted George would be to take his poor brother from the earth, and restore him to life, although he receives 250,000*l.* by his decease!"

He was succeeded by this son George, a most warm-hearted, excellent man—to whom it may be easily forgiven that he considers the founder of his house a model of perfection, not only in law, religion, and morals, but in manners, habits and accomplishments. To spare the feelings of one so pious, I resolve that this Memoir shall not be published in his lifetime, although I believe that it is chargeable with a desire to *extenuate* rather than to *set down aught in malice*.*

His descendants.

I cannot say with a good conscience that the first Lord Kenyon was highly educated and every way well qualified to fill the office of Chief Justice; but he was earnestly desirous to do what was right in it; and he possessed virtues which not only must endear him to his own descendants, but must make his memory be respected by his country.

* This Memoir was written in the lifetime of George, the second Lord Kenyon, with whom I was in habits of familiar intercourse. He died 1 Feb. 1855, and was succeeded by his eldest

son Lloyd, the third Lord, who I have heard does credit to the name he bears, but with whom I have not the honour of any acquaintance.

CHAPTER XLVI.

LIFE OF LORD ELLENBOROUGH FROM HIS BIRTH TILL
HIS MARRIAGE.*

I NOW come to a Chief Justice with whom I have had many a personal conflict, and from whom for several years I experienced very rough treatment, but for whose memory I entertain the highest respect. He was a man of gigantic intellect; he had the advantage of the very best education which England could bestow; he was not only a consummate master of his own profession, but well initiated in mathematical science, and one of the best classical scholars of his day; he had great faults, but they were consistent with the qualities essentially required to enable him to fill his high office with applause. ELLENBOROUGH was a *real* CHIEF—such as the rising generation of lawyers may read of and figure to themselves in imagination, but may never behold to dread or to admire.

When I first entered Westminster Hall in my wig and gown, I there found him “the monarch of all he surveyed,” and, at this distance of time, I can hardly recollect without awe his appearance and his manner as he ruled over his submissive subjects. But I must now trace his progress till he reached this elevation.

His lot by birth was highly favourable to his gaining distinction in the world—affording him the best facilities and the strongest incentives for

* When I wrote this Memoir I was still Chancellor of the Duchy of Lancaster, and a member of Lord John Russell's Cabinet.



exertion. He was the younger son of an English prelate of very great learning and very little wealth. His ancestors had long been "statesmen" in the county of Westmoreland—that is, substantial yeomen cultivating a farm which was their own property, and which was transmitted without addition or diminution for many generations. At last one of them was admitted to holy orders without having been at any university, and acted as the curate of the mountainous parish in which his patrimony lay. His son was the famous Dr. Edmund Law, Bishop of Carlisle, who having been sent early to St. John's College, Cambridge, highly distinguished himself there, was elected a fellow of Christ's College, and became one of the shining lights of that society celebrated under the name of the Zodiac. Before being raised to the episcopal bench, he was successively rector of Graystock and of Salkeld, Master of Peterhouse, and a Prebendary of Durham. In politics, like many dignitaries of that day, he was a good Whig, although almost all the inferior clergy were Tories, or rather Jacobites. In religion he strongly inclined to the low Church party, and was suspected of being somewhat latitudinarian in some of the articles of his faith. He published various theological works, the most famous of which was a treatise "on the Intermediate State"—inculcating the doctrine that the soul cannot be in active existence when separated from the body, and that it is therefore in a continuous sleep between death and the general resurrection.* He was married to Mary, daughter of John Christian, Esq., of Unerigg, in Cumberland, and by her

* It is stated by Townsend (vol. i. 301) and other biographers, that he was likewise author of 'A Serious Call to the Unconverted,' but this very lively work, which should rather be designated 'True Religion made Entertaining,' was written by WILLIAM LAW, born in

Northamptonshire, and educated at Oxford, who was tutor to the father of Gibbon the historian, and ended his career by becoming a disciple of Jacob Behmen. —*Gibbon's Miscellaneous Works; Boswell's Life of Johnson.*

had a family of twelve children, among whom were two bishops and a Chief Justice.

Edward, the subject of this memoir, was one of the youngest of them, and was born in the parson-
A.D. 1750. age of Salkeld on the 16th of November, 1750.
His birth. Resembling his mother much in features, he is said to have derived from her likewise his manners and the characteristic qualities of his mind. If the following description of the good bishop be correct, they could not have descended upon the sarcastic Chief Justice *ex parte paternâ*:—

“ His Lordship was a man of great softness of manners, and of the mildest and most tranquil disposition. His voice was never raised above its ordinary pitch. His countenance seemed never to have been ruffled; it invariably preserved the same kind and composed aspect, truly indicating the calmness and benignity of his temper. His fault was too great a degree of inaction and facility in his public station. The bashfulness of his nature, *with an extreme unwillingness to give pain*, rendered him sometimes less firm and efficient in the administration of authority than was requisite.” *

Yet our hero's “ Christian ” blood will not account for his *irascibility*, as he himself used to declare that in temper his mother was as admirable as the Bishop his father, and when he had reached old age he often expressed a fond respect for her memory.

Little Ned, although often naughty, was the chief favourite of both his parents. He remained at home till he was eight years old, and not only his nurse but the whole family spoke their native dialect in such force, that he retained the Cumbrian pronunciation
His education. and accent to his dying hour.† Soon after he had been taught to read, he was sent into Norfolk to live with his maternal uncle, the Rev. Humphrey Christian, a clergyman settled at Docking, in that

* Archdeacon Paley.

the week “ Soonda, Moonda, Toozeda

† For example, he called the days of Wenzeda,” &c.

county. Having been a short time at a school of some repute at Bury St. Edmunds, he was removed to the noble foundation of the Charterhouse ^{At the Charterhouse.} in London.* To his solid acquisitions there he ever gratefully ascribed his subsequent eminence in public life, and there, by the special directions of his will, his remains now repose near to those of the founder.

Law continued at the Charterhouse six years, and rose to be Captain of the school. He used to say that while enjoying this dignity he felt himself a much more important character than when he rose to be Chief Justice of England and a Cabinet Minister. At this early period he displayed the same vigour of character and the same mixture of arrogance and *bonhomie* which afterwards distinguished him. He was described by a class-fellow who had alternately experienced harshness and kindness from him, as "a bluff, burly boy, at once moody and good-natured—ever ready to inflict a blow or perform an exercise for his schoolfellows." †

When he had reached the age of eighteen he was sent to Cambridge and entered at Peterhouse, of which his father was still Master. He is said <sup>A.D. 1763.
At Cambridge.</sup> now to have occasionally indulged pretty freely in the dissipation which was then considered compatible with a vigorous application to study, but he never wasted his time in idle amusements; over his wine he would discuss the merits of a classical author, or the mode of working a mathematical problem—and when his head was cleared by a cup of strong tea, he set doggedly to work that he might outstrip those who confined themselves to this thin potation.

* He was admitted a Scholar on the 22nd of January, 1761, upon the nomination of the Bishop of London (Dr. Sherlock), and elected an Exhibitioner 2nd May, 1767.
† Capel Loft.

He belonged to a club of which William Coxe, then an undergraduate, afterwards an archdeacon, was the historiographer. The destined eulogist of Sir Robert Walpole thus, in flattering terms, described the future Chief Justice:—

“Philotes bears the first rank in this our society. Of a warm and generous disposition, he breathes all the animation of youth and the spirit of freedom. His thoughts and conceptions are uncommonly great and striking; his language and expressions are strong and nervous, and partake of the colour of his sentiments. As all his views are honest and his intentions direct, he scorns to disguise his feelings or palliate his sentiments. This disposition has been productive of uneasiness to himself and to his friends, for his open and unsuspecting temper leads him to use a warmth of expression which sometimes assumes the appearance of *fierté*. This has frequently disgusted his acquaintance; but his friends know the goodness of his heart and pardon a foible that arises from the candour and openness of his temper. Indeed he never fails, when the heat of conversation is over and when his mind becomes cool and dispassionate, to acknowledge the error of his nature, and, like a Roman Catholic, claim an absolution for past as well as future transgressions. Active and enterprising, he pursues with eagerness whatever strikes him most forcibly. His studies resemble the warmth of his disposition; struck with the great and sublime, his taste, though elegant and refined, prefers the glowing and animated conceptions of a Tacitus to the softer and more delicate graces of a Tully.”

I am afraid we must infer that in conversation he was rather overbearing, and that the love of sarcasm, which never left him, was then uncontrolled and made him generally unpopular. However, his straightforward manly character, joined to his brilliant talents, procured him while at the University friends as well as admirers—among whom are to be reckoned Vicary Gibbs, Simon Le Blanc and Souldan Lawrence, afterwards his rivals at the bar and associates on the bench. While an undergraduate, by exercising the invaluable virtue of self-denial he was upon the whole very in-

dustrious,—although he loved society, and said “the greatest struggle he ever made was in leaving a pleasant party and retiring to his rooms to read.”

When the time approached for taking his bachelor's degree, it was confidently expected that he would be senior wrangler and first medallist.

A.D. 1771.

His elder brother, afterwards Bishop of Elphin, to whom he was considered much superior, had been second wrangler in a good year. Edward, however, was decidedly surpassed in the mathematical examinations by two men much inferior to him in intellect, but of more steady application. His disappointment was imputed to excess of confidence. He himself took it deeply to heart, and he pretended to be as much ashamed of being third wrangler as if he had got the “wooden spoon.” His classical acquirements did carry off the first medal; but his pride was by no means assuaged, and he continued for the rest of his days to scoff at academical honours. This feeling was embittered by his writing the two following years for bachelors' prizes and gaining nothing beyond fifteen guineas, given by the members for the second best Latin Essay. Although his spoken eloquence was vigorous and impressive, he never could produce anything very striking when sitting down, unexcited, at his desk, and his written compositions, whether in Latin or English, were never remarkable either for lucid arrangement or purity of style.

He continued to reside at Cambridge two years after taking his bachelor's degree, with a view to a fellowship, and these he used to describe as the least agreeable and least profitable of his life. He still had fits of application to severe study, but the greatest part of his time he now devoted to light literature, taking special pleasure in novels. He said he abominated such as ended unhappily—but he read all indiscriminately, and while he luxuriated in Fielding and Smollett,

Mrs. Sheridan's 'Sidney Biddulph' was said to have drawn "iron tears down Pluto's cheek."

His father had much wished to have all his sons in the Church, but Edward was earnestly bent upon trying his fortune at the bar, and had obtained leave to enter himself of Lincoln's Inn,* on the express condition that he was not to begin the study of the law till he had obtained a fellowship, and that, failing this, he should still take holy orders — so that he might have something to depend upon for a subsistence beyond the precarious hope of fees. Meeting with some disappointments in academical promotion, he was strenuously urged to enter the Church, his father having become a bishop, with the power of giving him a living among the fells of Westmoreland; but at last he was elected a fellow of his College, and the Chief Justiceship was open to him.

It was a fortunate circumstance for him that he embraced the profession of the law *against* the earnest wishes of a father whom he sincerely respected and loved. He thus took a tremendous responsibility upon himself, and had the most powerful motives for exertion, that he might justify his own opinion and soothe the feelings of him whose latter days he hoped to see tranquil and happy. He spurned the idea of retreating upon the Church after a repulse by the Law, and he started with the dogged resolution to overcome every difficulty which he might encounter in his progress.

* "LINCOLN'S INN.

EDWARD LAW, Gentleman, of St. Peter's College, Cambridge, third son of the Right Rev^d. Father Adm^o. B. 6 } in God, Edmond Lord
fo 139. } Bishop of Carlisle, is admitted into the Society of this Inn the 10th day of June, in the Ninth year of the Reign of our Sovereign

Lord George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and in the year of our Lord 1769, and hath thereupon paid to the use of this Society the sum of Three pounds three shillings and four pence.

Admitted by
RD. SPOOKER."

Having obtained a small set of chambers in Lincoln's Inn, he forthwith in good earnest began the study of jurisprudence, not contenting himself with the lucid page of Blackstone and the elegant judgments of Mansfield, but vigorously submitting to whatever was most wearisome and most revolting if considered necessary to qualify him for practice at the English bar. Determined to be a good artificer, he did not dread "the smoke and tarnish of the furnace."

"Moots" and "Readings" having long fallen into disuse, the substituted system of *pupilizing* had been firmly established—well adapted to gain a knowledge of practice, but not of principles. A student intended for the common-law courts was expected to work at least two years in the office of a special pleader, copying precedents, drawing declarations and pleas, and having an opportunity of seeing the run of his master's business. The most distinguished instructor in this line at that time was George Wood, on whom Lord Mansfield made the celebrated special-pleading joke about his horse *demurring* when he should have *gone to the country*.^{*} In his office, Law, by great interest, obtained a desk, and he could soon recite the "money counts" as readily as his favourite poem of ABSALOM AND ACHITOPHEL. We may form a lively notion of his habits and his sentiments at this period from the following letter which, at the conclusion of a sitting of many hours in Mr. Wood's

His diligence in a special pleader's office.

^{*} George, though a subtle pleader, was very ignorant of *horse flesh*, and had been cruelly cheated in the purchase of a horse on which he had intended to ride the circuit. He brought an action on the warranty that the horse was "a good roadster, and free from vice." At the trial before Lord Mansfield, it appeared that when the plaintiff mounted at the stables in London, with the intention of proceeding to Barnet, nothing could in-

duce the animal to move forward a single step. On hearing this evidence, the Chief Justice with much gravity exclaimed, "Who would have supposed that Mr. Wood's horse would have *demurred* when he ought to have *gone to the country*?" Any attempt to explain this excellent joke to *lay gents.* would be vain, and to *lawyers* would be superfluous.



chambers, he wrote to his friend Coxe, then a private tutor to a young nobleman :—

“June 18th, 1773—Temple, Friday night.

“After holding a pen most of the day in the service of my profession, I will use it a few minutes longer in that of friendship. I thank you, my dearest friend, for this and every proof of confidence and affection. Let us cheerfully push our way in our different lines: the path of neither of us is strewn with roses, but they will terminate in happiness and honour. I cannot, however, now and then help sighing when I think how inglorious an apprenticeship we both of us serve to ambition—while you teach a child his rudiments and I drudge at the pen for attorneys. But if knowledge and a respectable situation are to be purchased only on these terms, I, for my part, can readily say ‘*hac mercede placet*.’ Do not commend my industry too soon; application wears for me at present the charm of novelty; upon a longer acquaintance I may grow tired of it.”

On the contrary, he became fonder and fonder of it. The tautological jargon still used in English law proceedings is disgusting enough, but in the exquisite logic of special pleading rightly understood, there is much to gratify an acute and vigorous understanding. The methods by which it separates the law from the facts, and having ascertained the real question in controversy between the parties, refers the decision of it either to the judges or to the jury, favourably distinguish our procedure from that of any other civilised nation, and have enabled us to boast of a highly satisfactory administration of justice without a scientific legal code.

Law continued working very hard as a special-pleading pupil for two years. During this period he not only grew to be a great favourite with his instructor, but the attorneys who frequented Mr. Wood's chambers became acquainted with his assiduity and skill. The pleadings settled by Mr. Wood and the opinions signed by him were generally written in a very large, bold,

pot-hook hand, which they discovered to be Mr. Law's, and although he was much too independent and honourable to resort to any evil arts for the purpose of ingratiating himself, and he was chargeable rather with *hauteur* than with *huggery*, he sometimes got into conversation with the attorneys, and he raised in their minds a very high opinion of his proficiency as well as of his industry.

When he was to cease to be *in statu pupillari* the question arose whether he should immediately be called to the bar, or follow the course recently introduced of practising as a special pleader under the bar—confining himself entirely to chamber practice—drawing law papers and giving opinions to the attorneys in cases of smaller consequence—making his own charges for his work, instead of receiving the spontaneous *quiddam honorarium*, which to a barrister must not be below a well-known *minimum*, but, being above that, he is not at liberty to complain of, however inadequate it may appear. Law was conscious of considerable powers of elocution which he was impatient to display. He not only belonged to a private debating club for students in the Temple, but he had gained applause by an oration at Coachmakers' Hall, then open to spouters in every rank of life. Nevertheless sacrificing the chance of present *éclat*, he prudently resolved to condemn himself to a period of useful obscurity, and he commenced "special pleader under the bar." He had great success, and business flowed in upon him, particularly from the agents of the northern attorneys. His charge for answering cases was very small, but he put a modest estimate upon the real value of the commodity which he sold. Many years afterwards, when he was presiding at *Nisi Prius*, a wrong-headed attorney, pleading his own cause, and being overruled on some untenable points which he took,

He practises
as a special
pleader
under the
bar.

at last impudently observed—"My Lord, my Lord, although your Lordship is so great a man now, I remember the time when I could have got your opinion for five shillings." *Ellenborough, C. J.*: "Sir, I daresay it was not worth the money!" This was a far better mode of vindicating the dignity of the Judge and carrying along with him the sympathies of the audience, than fining the delinquent or threatening to commit him for a contempt of court—the course which would probably have been followed by the hasty Kenyon.

Under the bar Law soon made a handsome income ;
His success. Cambridge men studying for the legal profession were eager to become his pupils at the established fee of one hundred guineas a year or two hundred guineas for three years; and when he made out his bills at Christmas he found that he was doing better than any barrister who could be considered his contemporary—with the single exception of Erskine.

During five long and irksome years did Law continue to devote himself to this drudgery, but his perseverance was amply rewarded, for he not only gained a reputation which was sure to start him with full business at the bar, but he acquired a thorough knowledge of his craft, which few possess who, after a mere course of solitary study, plunge into forensic wrangling.

In Hilary Term, 1780, he was called to the bar by the Honourable Society of Lincoln's Inn.
A.D. 1780.
He is called
to the bar. Generally speaking, success cannot be anticipated with any confidence for a young barrister, however well qualified to succeed he may appear to be; and our profession well illustrates the Scriptural saying, "The race is not always to the swift, nor the battle to the strong, nor bread to men of understanding, nor honour to men of skill, but time and chance happeneth to them all." Nevertheless Law

neither felt, nor had reason to feel, the slightest misgivings when he put on his gown, and started for the prize of Chief Justice. Lord Camden and other great lawyers had languished for many years without any opportunity of displaying their acquirements. Law had several retainers given to him by great northern attorneys on the very day of his call; and not only from family connexion, but from his reputation as a special pleader, which had long crossed the Trent, he was sure of finding himself at once in respectable practice. He disdained the notion of attending Quarter Sessions, and he always was inclined to sneer at young gentlemen who tried to force themselves into notice by writing a law book. He calculated that by his knowledge and his eloquence he must speedily be at the head of the Northern Circuit. In general those who practise under the bar as special pleaders do not aspire higher than holding second briefs in a stuff gown, with an *arrière pensée* of being raised to be a puisne judge. The ardour of our *débutant* had not been extinguished or chilled by his long apprenticeship, and he already heard the rustling of his silk gown, and imagined himself wearing the collar of SS, appropriated to the Chief Justice of England.

In the beginning of March, 1780, he joined the circuit at York, causing considerable alarm to those established in business, and curiosity among the disinterested. Without any suspicion of improper arts being used by himself, or of improper influence being exercised in his favour by others at the opening of the Nisi Prius court a large pile of briefs lay before him. His manner was somewhat rough, and he was apt to get into altercations with his opponents and with the judge; but his strong manly sense, and his familiar knowledge of his profession, inspired confidence into those who employed him;

He joins the
Northern
Circuit.

and the mingled powers of humour and of sarcasm which he displayed soon gave him a distinguished position in the Circuit Grand Court held *foribus clausis* among the barristers themselves, in which toasts were given, speeches were made, and verses were recited, not altogether fit for the vulgar ear.

At this period there were never more than two or three King's counsel on any circuit; and a silk gown was a high distinction to the wearer, not only among his brethren, but in general society,—placing him above the gentry of the country. The Northern leaders then were Wallace and Lee, whom no attorney approached without being uncovered. They were men of great eminence from their personal qualifications, and it was expected that they would speedily fill the highest judicial offices. They were before long taken from the circuit, to the joy of their juniors—Wallace being made Attorney-General, and Lee Solicitor-General; but, unluckily for them, they adhered to Mr. Fox and Lord North, and the permanent ascendancy of William Pitt after he had crushed the Coalition was fatal to their further advancement. Neither of them having reached the Bench, their traditionary fame, transmitted through several generations of lawyers, is now dying away.*

Till the beginning of the 19th century the Northern Circuit, in the spring, was confined to Yorkshire and Lancashire. In early times the distance of the four hyperborean counties from the metropolis, and the badness of the roads, rendered it impossible to hold assizes in any of them during the interval between Hilary and Easter Terms—so that a man committed for murder in Durham, Northumberland, Cumberland or Westmore-

* Wallace's son was made a peer, by the title of Lord Wallace of Knaresdale, in 1828, but died without issue in 1844. Lee, though he filled a great space in

the public eye while living, has not in any way added to the permanent "Grandeur of the law."

land might lie in gaol for near a twelvemonth before he was brought to trial. At the accession of George III. there were turnpike trusts in the remotest parts of the kingdom, and post horses were found wherever they were desired; but the usual superstitious adherence to ancient customs when the reason for them has ceased, long obstructed every attempt to improve the administration of justice in England.

The business being finished at York, Mr. Law proceeded with his brethren to Lancaster, where the list of civil causes was still scanty, although all that arose within the County Palatine were to be tried here. Liverpool, compared with what it has since become, might have been considered a fishing-village; Manchester had not reached a fourth of its present population; and the sites of many towns, which now by their smoke darken the Lancastrian air for miles around, were then green fields, pastured by cattle, or heathery moors, valuable only for breeding grouse. Here our junior did not fare so well as at York; yet he could not have been indicted at the Grand Court for carrying *unam purpuream baggam flaccescentem omnino inanitatis causâ*;* for although Wallace, who was nearly connected with him by marriage, had made him a present of a bag—an honour of which no junior before could ever boast on his first circuit—its flaccidity was swelled out by several briefs, which he received from an attorney of Ashton-under-Lyne, who used afterwards boastingly to say, “*I made Law Chief Justice.*”†

* These mock indictments were still often in Latin, notwithstanding the statute requiring all proceedings in Courts of Justice to be in the English tongue, it having been ruled that “no statute is binding on the Grand Court of the Northern Circuit in which this Court is not specially mentioned.”

† Now-a-days any young barrister buys a bag, and carries it as soon after

he is called to the bar as he likes; but when I was called to the bar, and long after, the privilege of carrying a bag was strictly confined to those who had received one from a King’s counsel. The King’s counsel, then few in number, were considered officers of the Crown, and they not only had a salary of 40*l.* a-year, but an annual allowance of paper, pens, and purple bags. These they dis-

The assizes being speedily over, Mr. Law returned to London well pleased with his success, and with his prospects. But in the two following Terms he never opened his mouth in court unless to make a motion of course,—and he was rather disheartened. It was not till years afterwards, when the attention of the nation was fixed upon him as counsel for Mr. Hastings, that his merits were appreciated by attorneys in London.

When the summer assizes came round he visited all the six counties which form the Northern Circuit. In each of them he had a considerable portion of business—and at Carlisle more than any other junior, his own qualifications as a lawyer being backed by the respect entertained for the venerable bishop of the diocese.

During seven years he continued to fight his way on the circuit in a stuff gown; and towards the end of this period he had gained such reputation in addressing juries as nearly to throw out of business several black-letter special pleaders, who were his seniors, and could not be retained along with him when it was intended that he should lead the cause. There was therefore a general wish among his brother circuiters that he should have silk, and a representation upon the subject was made to Lord Chancellor Thurlow; but some difficulty arose about conferring this mark of royal favour upon one who was considered a decided Whig. Although measures to encourage free trade, for the improvement of the law, and even for a reform of Parliament, were brought forward by the prime minister, the memory

His slow progress in London.

His silk gown delayed by his supposed Whiggery.

tributed among juniors who had made such progress as not to be able to carry their briefs conveniently in their hands. All these salaries and perquisites were ruthlessly swept away in 1830 by Lord

Grey's reforming Government—and it was full time—as King's counsel had become a mere grade in the profession, comprehending a very large number of its members.

of the "Coalition" was green, and the thirst for revenge upon all who had encouraged the attempt to put a force upon the Crown in the choice of ministers was still unsatiated. Thurlow, who soon after, during the King's insanity, intrigued with the Whigs that he himself might retain the Great Seal under them, had down to this time testified peculiar enmity to the whole of them as a party and individually. However, the urgency for Law's promotion increasing, and the judges who went the Northern Circuit joining in the application, it could no longer be refused.

Before we behold him as a public character, let us take a glance at him in domestic life. It was said that he had rather freely indulged in the gallantries of youth, and that he even for a time followed the example of the then Lord High Chancellor of Great Britain, the great prop of the Church, and chief distributor of ecclesiastical preferment, who openly kept a mistress.* But however this may be, Law was not supposed to have exceeded what was permitted by the licence of those times, and he was happily for ever rescued from the peril of scandal by being accidentally introduced to the beautiful Miss Towry, daughter of Mr. Towry, a com-
Law in domestic life.
His courtship.
 missioner of the navy, and a gentleman of good family. I myself recollect her become a mature matron, still a very fine woman, with regular features, and a roseate complexion; but when she first appeared, she excited admiration almost unprecedented. Amongst many others, Law came, saw, and *was* conquered. Considering his ungainly figure and awkward address, it seems wonderful that he should have aspired to her hand among a crowd of competitors—particularly as it was understood that she had already refused very tempting

* Mrs. Harvey, celebrated in the 'Rolliad,' and said to have been much courted by the clergy.

proposals. But he ever felt great confidence in himself whatever he undertook; he now said, "Faint heart never won fair lady," and after he had paid her devoted attention for a few weeks, he asked her father's leave to address her. The worthy commissioner gave his consent, having heard that this suitor was considered the most rising lawyer in Westminster Hall. But the young lady being interrogated, answered by a decided negative. Still the lover was undismayed—even (as it is said) after a third rebuff. At last, by the charms of his conversation, and by the eulogiums of all her relations, who thought she was repelling a desirable alliance, her aversion was softened, and she became tenderly attached to him.

The marriage took place on the 17th day of October, 1789, and proved most auspicious. Mrs. Law retained the beauty of Miss Towry; and such admiration did it continue to excite, that she was not only followed at balls and assemblies, but strangers used to collect in Bloomsbury Square to gaze at her as she watered the flowers which stood in her balcony. But no jealousy was excited in the mind of the husband even when princes of the blood fluttered round her. For many years the faithful couple lived together in uninterrupted affection and harmony, blessed with a numerous progeny, several of whom united their father's talents with their mother's comeliness.

His marriage.

CHAPTER XLVII.

CONTINUATION OF THE LIFE OF LORD ELLENBOROUGH TILL
HE WAS APPOINTED ATTORNEY-GENERAL.

LAW had long bitterly complained that his fame was confined to the limits of the Northern Circuit. He had scarcely as yet been employed in a single cause of interest in London, whereas Erskine was already the foremost man in the Court of King's Bench, and had special retainers all over England. Our aspirant believed that if he had a fair opportunity of displaying his powers he should gain high distinction; but he dreaded that he might never lead in actions of greater interest than *trespass* for an assault, or *assumpsit* on the warranty of a horse, or *covenant* for the mismanagement of a farm, or *case* for the negligent working of a mine.

In the midst of this despondency, he found at his chambers one evening a general retainer for WARREN HASTINGS, Esq., and instructions to settle the answer to the articles of impeachment,—with a fee of five hundred guineas. This was a much more important occurrence to him than his appointment to be Chief Justice of England, which was the consequence of it, and followed in the natural and expected course of events. He at once perceived that his fortune was made; and in rapid succession he saw with his mind's-eye the pleasure to be felt by his family, the mortification of his enemies, the glory that he was to acquire from entering the lists against such antagonists as Burke, Fox, and Sheridan, and the

He is retained as leading counsel for Warren Hastings.

honours of his profession which must in due time be showered upon him. In our juridical history no English advocate has ever had such a field for the display of eloquence as the counsel for the impeached Warren Hastings. Hale could only advise Charles I. to deny the jurisdiction of the High Court of Justice; Lane, in defending the Earl of Strafford, was only permitted to touch upon a technicality; and, till the reign of William III., in cases of high treason, it was only to argue a dry point of law which might incidentally arise that the accused had any assistance from advocacy. Since the Revolution there had been very interesting State Trials, but they only involved the fate of an individual; they exhibited the struggles of retained lawyers against retained lawyers; they turned upon specific acts of criminal conduct imputed to the accused; they were over in a single day, and in nine days more they were forgotten. No one then anticipated that the impending trial of Warren Hastings was to be begun before one generation of peers and decided by another, but all knew that it involved the mode in which a distant empire had been governed; that it was to unfold the history of some of the most memorable wars and revolutions in Asia; that it was to elucidate the manners and customs of races of men whom, though subjected to our dominion, we only imperfectly knew from vague rumour; that in the course of it appalling charges of tyranny and corruption were to be investigated; that the accusers were the Commons of England; that the managers of the impeachment were some of the greatest orators and statesmen England had ever produced, and that upon the result depended not only the existence of Mr. Pitt's administration, but, what was more exciting, the fate of an individual whose actions had divided public opinion throughout the civilized world—who was considered by some a monster

of oppression, cruelty, and avarice, and by others a hero, a philanthropist, and a patriot. The Northern circuiter, instead of addressing a jury of illiterate farmers at Appleby, in a small court filled with rustics, was to plead in Westminster Hall, gorgeously fitted up for the occasion, before the assembled peers in their ermined robes, before the representatives of the people attending as parties, and before a body of listeners comprehending all most distinguished for rank, for talent, and for beauty.

Although Mr. Law had not thought of this retainer more than of being made Archbishop of Canterbury, some of his friends had been engaged in a negotiation for securing it to him. Hastings himself was naturally desirous that he should be defended by Erskine, who had acquired so much renown as counsel for Lord George Gordon, and who had loudly declared his own personal conviction to be that the ex-Governor-General deserved well of his country. But as the impeachment had become a party question, and was warmly supported by the leaders of the party to which Erskine belonged, —although he was not then a member of the House of Commons, he reluctantly declined an engagement in which his heart would enthusiastically have prompted the discharge of his professional duties, and by which he might have acquired even a still greater name than he has left with posterity. He declared that he would not have been sorry to measure swords with Burke, who in the House of Commons had on several occasions attacked him rather sharply and successfully. "In Westminster Hall," said he, "I could have smote this antagonist hip and thigh." But Erskine could not for a moment endure the idea of coming into personal conflict with Fox and Sheridan, whom he loved as friends, whom he dreaded as rivals, and with whom, on a change of government, he hoped to be associated in high office.

The bar at this time afforded little other choice, Dunning had become a peer and sunk into insignificance; his contemporaries were either connected with Mr. Pitt's government, or were declining from years and infirmity—and among the rising generation of lawyers, although there was some promise, no one yet had gained a position which seemed to fit him for this “great argument.”

The perplexity in which Hastings and his friends found themselves being mentioned in the presence of Sir Thomas Rumbold, who had been in office under him in India, he delicately suggested the name of his brother-in-law,* pointing out this kinsman's qualifications in respect of legal acquirements, of eloquence, and, above all, of intrepidity—on which, considering the character of the managers for the Commons, the acquittal of the defendant might chiefly depend. This recommendation was at first supposed to proceed only from the partiality of relationship; but upon inquiry it appeared to be judicious. The resolution was, therefore, taken to employ Law as the leading counsel, associating with him Mr. Plomer, afterwards Vice-Chancellor and Master of the Rolls, and Mr. Dallas, afterwards Solicitor-General and Chief Justice of the Common Pleas,—in whom Law entirely confided and with whom he ever cordially co-operated. He still wore a stuff gown when this retainer was given, but he was clothed in silk before the trial began.

He prepared himself for the task he had undertaken with exemplary diligence and assiduity. Carrying along with him masses of despatches, examinations and reports, which might have loaded many camels, he retreated to a cottage near the lake of Windermere, and there spent a long vacation more laborious than the busiest Term

His preparation for the trial.

* Sir Thomas Rumbold had married Joanna, Bishop Law's youngest daughter.

he had ever known in London. Although possessing copiousness of extempore declamation, he was fond of previously putting down in writing what he proposed to say in public on any important occasion, and there are now lying before me scraps of paper on which he had written during this autumn apostrophes to the Lords respecting the Rohilla war, the cruelties of Debi Sing, and the alleged spoliation of the Begums.

On the 19th of February, 1788, Mr. Burke having finished a speech of four days, in which he generally opened all the charges, Mr. Fox, his
A.D. 1788.
brother manager, proposed that thereafter the charges should be taken separately, and that not only the evidence and arguments should be concluded by both sides, but that the judgment should be given by the Court upon each before another was taken in hand. Now Mr. Law for the first time
His first speech for Hastings.
opened his mouth as counsel for Mr. Hastings, and strongly resisted this proposal. He distinctly saw that upon the mode of procedure depended the issue of the impeachment, for there not only was a strong prejudice against the accused, which would have rendered perilous a speedy decision upon any part of his case, but the defence really arose from a view of the whole of his conduct while Governor-General;—the difficulties in which he was placed palliating, if they did not justify, acts which, taken by themselves, appeared criminal. The managers, feeling the advantage they must derive from having a separate trial, as it were, on each charge, strenuously argued that this was the parliamentary course according to Lord Strafford's case and other precedents, that the due weight of evidence was most truly appreciated while it was fresh in the memory,—and that facility of conception, notwithstanding the vastness of the subject, might best be attained by subdividing it into parts which the mind

might be capable of grasping. Law, in answering them, availed himself of the opportunity to animadvert upon the violent language used by Burke, saying that "the defendant, who was still to be presumed to be innocent till proved to be guilty, had been loaded with terms of invective and calumny in a strain which, never since the days of Sir Walter Raleigh, had been used in an English court of justice." Mr. Fox, interrupting him, said, that "vested with a great trust from the House of Commons, he could not sit and hear such a complaint, which proceeded on the principle that in proportion as the accused was deeply guilty, the accuser, in describing his crimes, was to be considered a calumniator." Law, without any retractation or apology, pursued his argument against the course proposed by the managers, insisting that while it was contrary to the mode of proceeding in the courts of common law, there was no parliamentary precedent to support it. "My Lords," said he, "in answering one charge we may be compelled to disclose to our adversary the defence which we mean to employ upon others. We conceive that the whole case should be before you ere you decide upon any part of it. On the first charge are we, for the purpose of explaining the general policy with which it is connected, to produce all the evidence specially calculated to repel several others? On the second charge is the whole of the exculpatory evidence to be given over again? Is this just? Is it reasonable? Is it expedient? Would it be proposed in any other court professing to administer the criminal law of the country?

The peers withdrew to their own chamber to deliberate, and on their return to Westminster Hall, the Lord Chancellor Thurlow thus addressed the managers: "Gentlemen, I have it in charge to inform you that you are to produce all your evidence in support of the

prosecution before Mr. Hastings is called upon for his defence."

During the examination of the witnesses there was a constant sparring between the counsel and the managers, and blows were interchanged with all the freedom of *nisi pruis*. For example, when Sheridan was examining Mr. Middleton for the prosecution, and finding him rather adverse, addressed some harsh observations to him, Law thus interposed—"I must take the liberty of requesting that the honourable manager will not make any comments on the evidence of the witness in the presence of the witness. Such a course will tend to increase the confusion of a witness who is at all confused, and affect the confidence of the most confident. I shall therefore hope that the honourable manager, from humanity and decorum, will be more abstemious."

His contests
with Burke
and the
other mana-
gers on
questions of
evidence.

The managers having entirely failed to prove one particular act of misconduct which they had imputed to Mr. Hastings, Law expressed a wish that in future they would be more cautious in avoiding calumny and slander. Burke answered, with much indignation, that "he was astonished the learned gentleman dared to apply such epithets to charges brought by the Commons of Great Britain, whether they could or could not be proved by legal evidence; it was well known that many facts could be proved to the satisfaction of every conscientious man by evidence which, though in its own nature good and convincing, would not be admitted by the technical canons of lawyers; it would be strange indeed that a well-founded accusation should be denominated calumnious and slanderous, because an absurd rule prevented the truth of it from being established"

Law: "My Lords, I do not mean to apply the terms *calumny* and *slander* to any proceeding of the House of Commons; but I

have the authority of that House for declaring that the honourable member has, at your Lordships' bar, used calumnious and slanderous expressions not authorised by them."

Fox : "My Lords, it is highly irregular and highly indecent in an advocate to allude to what has taken place within the walls of the House of Commons. The learned counsel has done worse, he has misrepresented that to which he presumed to allude. We have offered in evidence the very documents upon the authority of which the Commons preferred the charge now said to be calumnious and slanderous."

Law : "I cannot justly be accused of improperly referring to proceedings in the House of Commons, as I have only repeated in substance the account given of these proceedings by the honourable manager himself in the hearing of your Lordships—and I have therefore the highest authority for asserting that my client has suffered from calumny and slander."*

Fox : "Here is a new misrepresentation. My honourable friend has not told your Lordships that anything said by the managers at your Lordships' bar was a calumny or a slander, nor said anything which can be tortured into such a meaning. And, my Lords, we will not proceed with the trial till your Lordships have expressed your opinion of the language used by the learned gentleman. We must return to the Commons for fresh instructions."

Thurlow C. : "The words you complain of must be taken down in writing."

They were taken down accordingly.

Law : "I acknowledge them and abide by them."

The peers were about to withdraw for deliberation to their own chamber, when it was suggested and agreed that the Chancellor should admonish the learned counsel, "*that it was contrary to order in the counsel to advert to anything that had happened in the House of Commons; that it was indecent to apply the terms calumny and slander to anything which had been said by their authority, and that such expressions must not be repeated.*"

The great struggle was, whether the Lords were to be

* This refers to a resolution of the House of Commons animadverting on expressions used by Mr. Burke.

governed by the rules of evidence which prevail in the courts below. These Burke treated with great contempt. On one occasion he said :—

“The accused rests his defence on quibbles, and appears not to look for anything more honourable than an Old Bailey acquittal, where on some flaw in the indictment the prisoner is found *not guilty*, receives a severe reprimand from the Judge, and walks away with the execration of the bystanders. No rule which stands in the way of truth and justice can be binding on this high court.”

Law : “In the name of my client, in the name of the people of England, I protest against such doctrine. The rules of evidence have been established because by experience they have been found calculated for the discovery of truth, and the protection of innocence. If any of them are erroneous, let them be corrected and amended, but let them be equally binding upon your Lordships and the inferior courts. Are you to dismiss every standard of right, and is a party tried at your Lordships’ bar—his honour and his life being at stake—to be cast upon the *capricious*, I will not say *corrupt*, opinion entertained or professed by a majority of your Lordships? Why do you summon the Judges of the land to assist you but that you may be informed by them for your guidance what are the rules of law? Unless the rules of law are to prevail, a reference to these reverend sages would be a mockery, and you should order them for ever to withdraw.”

The Lords very properly held that the rules of law respecting the admissibility of evidence ought to guide them; and during the trial they twenty-three times referred questions of evidence * to the judges, being

* I have examined the questions and answers as they appear in the Journals of the House of Lords, but they are not instructive, or of much value. With a single exception, they were not so framed as to decide any abstract point, and merely asked whether, under the actual circumstances which occurred, specific evidence was admissible.

One response to a question put was of general application, and might have been advantageously cited in the late case of *Melhuish v. Collier*, 15 Q. B. 878.

Question put to the Judges during the Trial of Warren Hastings, Esq.

Feb. 29, 1788.

Whether, when a witness, produced and examined in a criminal proceeding by a prosecutor, disclaims all knowledge

Judges’ reply to the said question, as entered on the Lords’ Journals.

April 10th.

The Lord Chief Baron delivered the unanimous opinion of the Judges, that, when a witness produced and examined

always governed by their advice.* But to the very conclusion of the trial Burke bitterly complained, as often as any evidence which the managers proposed to adduce was excluded in compliance with the opinion of the Judges. On one occasion, when evidence irregularly offered by the Managers in reply had been very properly rejected, a peer called Burke to order for arguing against a decision of the House. Mr. Hastings's leading counsel contemptuously added, that he would not waste a moment of their Lordships' time in supporting a judgment which, being founded on a rule of law, wanted no other support. *Burke*: "I have become accustomed to such insolent observations from the learned gentlemen retained to obstruct our proceedings, who, to do them justice, are as prodigal of bold assertions as they are sparing of arguments."

When the Lords disallowed the evidence of the history of the Mahratta war, Law having merely said, "It would be an insult to their Lordships, and treachery to his client, were he to waste one minute in stating the objections to it," Burke expressed deep regret that so many foreigners were present; but (looking into a box in which sat the Turkish ambassador and his suite, he added) "let us hope that some of them do not understand the English language, as the insolent remarks we

of any matter so interrogated, it be competent for such prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made by such witness before a Committee of the House of Commons, or in any other place, and by demanding of him whether the particulars so suggested were not the answers he had so made?

in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it is not competent for such prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made before a Committee of the House of Commons, or in any other place, and by demanding of him whether the particulars so suggested were not the answer he had so made.

* The same course was subsequently followed on the impeachment of Lord Melville, and is now to be considered the established law of parliament.

are compelled to hear from counsel would be a disgrace to a Turkish court of justice."

Law was more hurt when, at a later period of the trial, having called on Burke to retract an assertion alleged to be unfounded, the Right Honourable Manager, putting on a look of ineffable scorn, merely said in a calm tone, "My Lords, the counsel deserves no answer." Soon after, Law, complaining of the delay caused by the frivolous questions on evidence raised by the Managers, added, "The Right Honourable Manager to whom I chiefly allude, always goes in a circle, never in a straight line. The trial will bring discredit on all connected with it. We owe it to our *common character* to prevent unnecessary delay." "Common character!" angrily interrupted the Manager, "I can never suffer the dignity of the House of Commons to be implicated in the common character of the bar. The learned counsel may take care of his own dignity—ours is in no danger except from his sympathy."

But it was by the rejection of evidence of the alleged cruelties of Raja Debi Sing that Burke was driven almost to madness. His recital of these in his opening speech had produced the most tremendous effect, curdling the blood of the stoutest men, and making ladies shriek aloud and faint away.* A witness being called to prove these horrible charges,

* "The treatment of the females cannot be described: dragged from the inmost recesses of their houses, which the religion of the country had made so many sanctuaries, they were exposed naked to public view: the virgins were carried to courts of justice, where they might naturally have looked for protection, but they looked for it in vain; for in the face of the ministers of justice, in the face of assembled multitudes, in the face of the sun, those tender and modest virgins were brutally violated. The only difference between their treat-

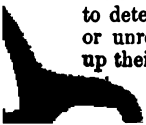
ment and that of their mothers, was that the former were dishonoured in open day, the latter in the gloomy recesses of their dungeon. Other females had the nipples of their breasts put in a cleft of bamboo and torn off. What modesty in all nations most carefully conceals, this monster revealed to view, and consumed by slow fires; and the tools of this monster, Debi Sing—horrid to tell!—carried their natural brutality so far as to introduce death into the source of generation and of life."

the counsel for Mr. Hastings objected that the evidence was inadmissible as there was no mention of such cruelties in any article of the impeachment, and it was not even now suggested that Mr. Hastings had directed them, or in any way sanctioned or approved of them. The Lords, after consulting the Judges, determined that the evidence could not be received.

Mr. Burke: "I must submit to your Lordships' decision, but I must say at the same time that I have heard it with the deepest concern; for if ever there was a case in which the honour, the justice, and the character of a country were concerned, it is that which relates to the disgusting cruelties and savage barbarities perpetrated by Debi Sing, under an authority derived from the British Government, upon the poor forlorn inhabitants of Dinagapore—cruelties and barbarities so frightfully and transcendently enormous, that the bare mention of them has filled with horror every class of the inhabitants of this country. The impression which even my feeble representation of these cruelties and barbarities in this place produced upon the hearts and feelings of all who heard me is not to be removed but by the evidence that shall prove the whole a fabrication. The most dignified ladies of England swooned at the bare recital of these atrocities, and is no evidence now to be received to prove that my forbearing statement fell far short of the appalling reality?"

Law: "It is not to be borne that the Right Honourable Manager shall thus proceed to argue in reprobation of their Lordships' judgments.

Burke: "Nothing can be farther from my intention than to reprobate any decision coming from a Court for which I entertain the highest respect. But I am not a little surprised to find that the learned counsel should stand forth the champion of your Lordships' honour. I should have thought that your Lordships were the best guardians of your own honour. It never could be the intention of the Commons to sully the honour of the House of Peers. As their *co-ordinate* estate in the legislature the Commons are perhaps not less interested than your Lordships in the preservation of the honour of this noble House; and therefore we never could think of arguing in *reprobation* of any of its decisions. But I may venture to suggest that the question which you have put to the Judges is not framed in the manner to determine whether what the Commons propose is reasonable or unreasonable. If the Commons had been suffered to draw up their question themselves, they would have worded it in a



very different manner, and a very different decision might have been given by your Lordships. It is true that the cruelties of Debi Sing are not expressly charged in the Article to have been committed by the authority of Mr. Hastings; but the Article charges Mr. Hastings with having established a system which he knew *would* be, and in point of fact *had* actually been, attended with cruelty and oppression. The Article does not state by whom the acts of cruelty have been committed, but it states cruelty in general, and of such cruelty so charged the Managers have a right to give evidence. The character of the nation will suffer, the honour of your Lordships will be affected, if when the Commons of England are ready to prove the perpetration of barbarities which have disgraced the British name, and call for vengeance on the guilty heads of those who have been in any degree instrumental in them, the inquiry is to be stopped by a miserable technicality. Suffer me to go into proof of those unparalleled barbarities, and if I do not establish them to the full conviction of this House and of all mankind, if I do not prove their immediate and direct relation to and connexion with the system established by Mr. Hastings, then let me be branded as the boldest calumniator that ever dared to fix upon unspotted innocence the imputation of guilt. My Lords, I have done. My endeavour has been to rescue the character and justice of my country from obloquy. If those who have formerly provoked inquiry—if those who have said that the horrid barbarities which I detailed had no existence but that which they derived from the malicious fertility of my imagination—if those who have said I was bound to make good what I had charged, and that I should deserve the most opprobrious names if I did not afford Mr. Hastings an opportunity of doing away the impression made by the picture of the savage cruelties of Debi Sing—if these same persons who so loudly call for inquiry now call upon your Lordships to reject the proofs which they before challenged me to bring, the fault is not mine. Upon the heads of others, therefore, and not upon those of the Commons of Great Britain, let the charge fall that the justice of the country is not to have its victim. The Commons stand ready to make good their accusation, but the defendant shrinks from the proof of his guilt."

Law [according to the original report of the trial, "with unexampled warmth, whether real or assumed"]: "My Lords, the Right Honourable Manager feels bold only because he knows the proof which he wants to give *cannot* be received. He knows that from the manner in which the charge is worded your Lordships *cannot* if you *would* admit the proof without violating the clearest rules and principles of criminal procedure. But let the

Commons put the details of those shocking cruelties into the shape of a charge which my client can meet, and then we will be ready to hear every proof that can be adduced. And if, when they have done that, the much-injured gentleman I am now trying to shield from calumny does not falsify every act of cruelty that the Honourable Managers shall attempt to prove upon him, MAY THE HAND OF THIS HOUSE AND THE HAND OF GOD LIGHT UPON HIM.”*

This imprecation on the head of the client was deemed more cautious than magnanimous, and it was thus criticised by Fox in summing up the evidence on this Article:—

“The counsel for the defendant have invoked the judgment of your Lordships and the vengeance of Almighty God, not on their own heads, but on the head of their client, if the enormities of Debi Sing, as stated by my Right Honourable Friend, shall be proved and brought home to him. I know not how the defendant may relish his part in this imprecation; but in answer to it, if the time should come when we are fairly permitted to enter upon the proof of those enormities, I would in my turn invoke the most rigorous justice of the peers and the full vengeance of Almighty God, not on the head of my Right Honourable Friend, but on my own, if I do not prove those enormities and fix them upon the defendant to the full extent charged by my Right Honourable Friend; and this I pledge myself to do under an imprecation upon myself as solemn as the learned gentleman has invoked upon his client.”

These imprecations can only be considered rhetorical artifices; both sides were well aware that the contingency on which they were to dare the lightning of Heaven could never arrive, for the Articles of Impeachment, as framed, clearly did not admit the proof, and a fresh Article could not then have been introduced. In truth, the cruelties of Debi Sing had been much exaggerated, and Mr. Hastings, instead of instigating,

* The reporter, who seems to have had a spite against Mr. Law, adds, “After this ejaculation, delivered in a tone of voice not unlike that of the theatric hero, when he exclaims ‘Richard

is hoarse with calling thee to battle!’ the scene closed.”—*History of the Trial of Warren Hastings, Esq., published by Debrett, Part III., pp. 54-56.*

had put a stop to them. His counsel must have deliberated long before they resolved to object to the admissibility of the evidence, and they were probably actuated by a dread of the prejudice it might create before it could be refuted.

Law turned to good account the frivolity and vanity of Michael Angelo Taylor, a briefless barrister, who, although the butt of the Northern Circuit, had contrived to get himself appointed a Manager. An important point coming on for argument, Law observed — “It is really a pity to waste time in discussing such a point which must be clear to all lawyers; this is no point of political expediency, it is a mere point of law, and my honourable and learned friend there (pointing to Michael Angelo), from his accurate knowledge of the law, which he has practised with so much success, can confirm fully what I say.” Michael puffed, and swelled, and nodded his head—when Burke ran up to him quite furious, and, shaking him, said, “You little rogue, what do you mean by assenting to this?”

Law was most afraid of Sheridan, but once ventured to try to ridicule a figurative observation of his that “the treasures in the Zenana of the Begum were an offering laid by the hand of piety on the altar of a saint,” by asking, “how the lady was to be considered a saint, and how the camels when they bore the treasure were to be laid upon the altar?” *Sheridan*: “This is the first time in my life that I ever heard of special pleading on a metaphor, or a bill of indictment against a trope; but such is the turn of the learned gentleman’s mind that when he attempts to be humorous no jest can be found, and when serious no fact is visible.”

Considering that the Managers were assisted by the legal acumen and experience of Dr. Lawrence, Mr. Mansfield, and Mr. Pigott, it is wonderful to see what questions they put and insisted upon. For example, it

being proved that Mr. Hastings had authorized the letting of certain lands to Kelloram and Cullian Sing, supposed to be cruel oppressors, they asked the witness—"What impression the letting of the lands to Kelloram and Cullian Sing made on the minds of the inhabitants of the country?" Before there was time to object, the witness blurted out, "They heard it with terror and dismay." Law insisted that this answer should be expunged, and that the question should be overruled, it not being in the competence of the witness to speak of anybody's feelings but his own. The Managers standing up strenuously for the regularity of their question and the fitness of the answer to it, the Peers adjourned from Westminster Hall to their own chamber, and, after a reference to the Judges, Lord Chancellor Thurlow announced to the Managers that the question objected to could not be regularly put, and that the answer to it must be expunged. Nearly a whole day was wasted in this foolish controversy.

On the 14th of February, 1792, and the seventy-fifth day of the trial, Law thus began to open the defence:—

A.D. 1792.
Law's opening of the defence.

"Your Lordships are now entering on the fifth year of a trial, to which the history of this or any other country furnishes nothing like a parallel; and it at length becomes my duty to occupy somewhat longer the harassed and nearly exhausted attention of your Lordships, and to exercise reluctantly the expiring patience of my client. Mr. Hastings, by the bounteous permission of that Providence which disposes of all things, with a constitution weakened by great and incessant exertions in the service of his country and impaired by the influence of an unwholesome climate—suffering from year to year the wounds which most pierce a manly and noble mind—the passive listener to calumny and insult—thirsting with an honourable ardour for the public approbation which illustrious talents and services ever merit—while malignity and prejudice are combining to degrade him, and blacken his fair reputation in the eyes of his country—subdued by the painful progress of a trial protracted to a length unexperienced before by any British subject,

and unprecedented in the annals of any other country—under all these accumulated hardships Mr. Hastings is alive this day, and kneeling at your Lordships' bar to implore the protection, as he is sure of the justice, of this august tribunal. To a case pampered—I had almost said corrupted—by luscious delicacies, the advocates of my client can only bring plain facts and sound arguments; but we can show that eloquence has been substituted for proofs, and acrimony has supplied the place of reasoning. I could never be brought to believe that justice was the end looked for, where vengeance was the moving power."

After an exordium not wanting in dignified solemnity, although creating a wish for more purity and simplicity of diction, he proceeded to take a general view of the origin of the prosecution, of the charges into which it was divided, of the feeble manner in which they had been supported, and of the evidence by which they were to be repelled. Upon the whole, he rather disappointed expectation. Although he had shown spirit and energy while wrangling with the Managers about evidence, and although still undaunted by the matchless power of intellect opposed to him,—now when he had all Westminster Hall to himself and he was to proceed for hours and days without interruption or personal contest, he quailed under the quietude, combined with the strangeness and grandeur, of the scene. He by no means satisfied the lively Miss Burney, then attached to the Royal household, who were all, as well as the King and Queen, devoted enemies to the impeachment, and thought no praise sufficiently warm which could be bestowed upon the accused. This is her disparaging language in her Diary:—

"To hear the attack the people came in crowds; to hear the defence they scarcely came in *tête-à-tête*. Mr. Law was terrified exceedingly, and his timidity induced him so frequently to beg quarter from his antagonists, both for any blunders and any deficiencies, that I felt angry even with modest egotism. We (Windham and I) spoke of Mr. Law, and I expressed some dis-

satisfaction that such attackers should not have had able and more equal opponents. 'But do you not think that Mr. Law spoke well,' cried Windham—'clear, forcible?' 'Not forcible,' cried I—'I would not say *not clear*.' 'He was frightened,' said Windham; 'he might not do himself justice. I have heard him elsewhere, and been very well satisfied with him; but he looked pale and alarmed, and his voice trembled.'"

However, she adds—

"In his second oration, Mr. Law was far more animated and less frightened, and acquitted himself so as almost to merit as much commendation as, in my opinion, he had merited censure at the opening."

It is a curious fact that the State Trial which, of all that have taken place in England, excited the most interest is the worst reported. We have no account of it except from a set of ignorant short-hand writers, who, although they could take down evidence with sufficient accuracy, were totally incapable of comprehending the eloquent speeches which were made on either side. Burke having observed that "virtue does not depend upon *climates* and *degrees*," he was reported to have said, "virtue does not depend upon *climaxes* and *trees*."

The only authentic specimens I can give of Mr. Law's oratory when he was addressing the Lords on the merits of the impeachment are the procœmium and the peroration of his speech on the Begum charge, which are now in my possession, written by his own hand, and which he had elaborately composed at full length, and got by heart, although he trusted to short notes for his comments upon the evidence:

"Again, my Lords, after a further period of protracted solicitude, Mr. Hastings presents himself at your Lordships' bar, with a temper undisturbed, and a firmness unshaken, by the lingering torture of a six years' trial.

His procœmium and peroration on the Begum charge.

"God forbid that in the mention of this circumstance I should be understood to arraign either the justice or mercy of this tribunal. No, my Lords, all forms of justice have been well observed. My blame lights on the law, not on your office, 'which you with truth and mercy minister.' As little I advert to this circumstance as seeking on this account unduly to interest your Lordships' compassion and tenderness in his favour. No, my Lords, as he has hitherto disdained to avail himself of any covert address to these affections, so your Lordships may, I trust, be assured that he does not feel himself more disposed at this moment than at any former period of his trial to sully the magnanimity of his past life by the baseness of its close.

"He does not even now on his own account merely condescend to lament the unfortunate peculiarity of his destiny which has marked him out as the only man since man's creation who has existed the object of a trial of such enduring continuance; for, my Lords, he has the virtue, I trust, as far as human infirmity and frailty will permit, to lose the sense of his own immediate and peculiar sufferings in the consolatory reflection which his mind presents to him—that as he is in the history of mankind the first instance of this extraordinary species of infliction, so unless he vainly deems of the effect of this instance upon the human mind, and has formed a rash and visionary estimate of the generosity and mercy of our nature, it will be the last.

"He trusts, indeed, that with reference to his own country at least, he may venture to predict, what the great Roman historian, Livy, in contrasting a new and barbarous punishment, inflicted in the infancy of the Roman empire, with the subsequent lenity and humanity of the system of penal laws which obtained amongst his countrymen, ventured in nearly the same words to declare—'Primum ultimumque illud supplicium apud Romanos exempli parum memoris legum humanarum fuit.*' Dismissing,

* This, it will be recollected, relates to the case of Mettius Fuffetius, who for his treachery was sentenced to a frightful death by Tullus Hostilius. The historian in a few lines beautifully narrates the sentence, the execution, and the behaviour of the lookers-on:—"Tum Tullus: 'Metti Fuffeti,' inquit, 'si ipse discere posses fidem ac fœdera servare, vivo tibi ea disciplina a me adhibita esset. Nunc quoniam tuum insanabile ingenium est, at tu tuo supplicio doce humanum genus ea sancta credere, quæ a te violata sunt. Ut igitur paulo ante animum inter Fidenatem Romanamque

rem ancipitem gessisti, ita jam corpus passim distrahendum dabit. EXINDE, DUABUS ADMOTIS QUADRIGIS, IN CURRUS EARUM DISTENTUM ILLIGAT METTIUM—DEINDE IN DIVERSUM ITER EQUI CONCITATI, LACERUM IN UTROQUE CURRU CORPUS, QUA INHÆSERANT VINCLIS MEMBRA, PORTANTES.'

"Avertere omnes a tanta fœditate spectaculi oculos. *Primum ultimumque illud supplicium apud Romanos exempli parum memoris legum humanarum fuit*, in aliis gloriari licet, nulli gentium mitiores placuisse poenas."—Lib. l. c. 28

however, a topic which in the present advanced stage of this trial has become at least as material for consideration with a view to the happiness and safety of others as his own, the defendant only requests it may for the present so far dwell in your Lordships' memory as to exempt him from the blame of impatience if, thus circumstanced, he has ventured to expect such a degree of accelerated justice as a just attention to other public demands on your Lordships' time may consistently allow.

"He cannot but consider the present moment as on some accounts peculiarly favourable to the consideration and discussion of the many important questions which present themselves for your Lordships' judgment in the course of this trial.

"In a season of recommencing difficulty and alarm we learn better how to estimate the exigence of the moment, and the merit of that moment well employed, than in the calmer season of undisturbed tranquillity.

"We know then best how to value the servant and the service. We hear with awakened attention and conciliated favour the account which vigour, activity, and zeal are required to render of their efforts to save the state—and their success in saving it. In receiving the detail which ardent and energetic service is obliged to lay before us, by a sort of inconsistent gratitude we almost wish to find some opportunities of recompense in the voluntary exercise of our own virtues—some errors which candour may conceal—some excesses which generosity may be required to palliate.

"The same motives which at such a season induce us to appreciate thus favourably the situation, duties, difficulties, and deserts of hazardous and faithful service, induce us also to contemplate with more lively indignation the open attacks of undisguised hostility; with more poignant aversion and disgust the cold and reluctant requitals of cautious friendship, and with still more animated sentiments of detestation and abhorrence, the treacherous, mischievous attacks of emboldened ingratitude.

"These are sentiments which the present moment will naturally produce and quicken in every mind impregnated with a just sense of civil and political duty. Can I doubt their effect and impression here, where we are taught, and not vainly taught, to believe that elevation of mind and dignity of station are equally hereditary, and that your high court exhibits at once the last and best resort of national justice, and the purest image of national honour?

"To you, my Lords, unadmonished by the ordinary forms and sanctions by which in other tribunals the attention is attracted and the conscience bound to the solemn discharge of judicial duty, the people of England, by a generous confidence

equally honourable to themselves and you, have for a long succession of ages entrusted to your own unfettered and unprompted, because unsuspected, honour—have entrusted the supreme and ultimate dispensation of British justice.

“Such then being the tribunal, and such the season at which the defendant is required to account before it for certain acts of high public concernment done in the discharge of one of the greatest public trusts that ever for so long and in so arduous a period fell to the lot of any one man to execute, he cannot but anticipate with the most sanguine satisfaction that fair, full, and liberal consideration of his difficulties and of his duties, of the means by which those difficulties were overcome, and the manner in which those duties were discharged, which he is sure of receiving at your Lordships’ hands.

“The great length of your Lordships’ time which this trial has already occupied, and the further portion of it which it must yet necessarily consume, renders it unpardonable to waste a moment upon any subject not intimately connected with the very substance of the charges which yet remain to be discussed. I will therefore without delay address myself to the immediate and actual topics which are most intimately connected with the charge now before you, which is contained in the Second Article of Impeachment, and respects principally the supposed injuries of the mother and grandmother of the Nabob of Oude—ladies usually distinguished by the name of the *BEGUMS*.”

A speech of many hours he concluded with this
PERORATION :

“I have now at a greater length than I could have wished gone through the vastness of evidence which the Managers have thought fit to adduce, and have discussed many of the arguments which they have thought fit to offer in support of this charge, and have brought more immediately before your Lordships’ view such parts of that evidence as completely repel the conclusions the Managers have attempted to infer from an unfair selection and artificial collation of other parts of that same evidence. I have also generally opened to your Lordships the heads of such further evidence as we shall on our part, in further refutation of the criminal charges contained in this Article, submit to your Lordships’ consideration, in order to establish beyond the reach of doubt that Mr. Hastings, in all the transactions now in question, behaved with a strict regard to every obligation of public and private duty, and effectually consulted and promoted the real and substantial interests of the country, and the honour and

credit of the British name and character. Stripping this Article therefore of all the extraneous matter with which it has been very artfully and unfairly loaded, and reducing it to the few and simple points of which in a fair legal view of the subject it naturally consists—the questions will be only those which in the introduction to my address to your Lordships on this charge I ventured to state, namely, whether the Begums, by their conduct during the disturbances occasioned by the rebellion, had manifested such a degree of disaffection and hostility towards the British interests and safety as warranted the subtraction of the guarantee which had been theretofore voluntarily and gratuitously interposed for their protection; and next, whether after that guarantee was withdrawn the Nabob was not authorized upon every principle of public and private justice to reclaim his rights, and we to assert our own.

“If there be those who think Mr. Hastings ought to have pursued a formal detailed judicial inquiry on the subject of the notorious misconduct of the Begums, before he adopted any measures of prevention or punishment in respect of them;—that he should have withheld his belief from the many eye and ear witnesses of the mischief they were hourly producing and contriving against us;—I say to those who think that the unquestionable and then unquestioned notoriety of a whole country—corroborated by the positive testimony of *all* the officers then in command in that country, speaking to facts within their own observation and knowledge, is not a ground for immediate political conduct—to persons thus thinking I am furnished with little argument to offer. I have no record of the Begums’ conviction engrossed on parchment to lay before you—I have only that quantity of evidence which ought to carry conviction home to every human breast accessible to truth and reason.

“God forbid that I should for a moment draw in question the solemn obligation of public treaties, I am contending for their most faithful, honourable, and exact performance. We had pledged our word to grant the most valuable and humane protection—we asked as a recompense only the common offices of friendship and the mere returns of ordinary gratitude. How were they rendered? When the Palace of Shewalla and the streets of Ramnagur were yet reeking with the blood of our slaughtered countrymen:—when that benefactor and friend, to whose protection, as the Begum herself asserts, her dying lord, Sujah Dowla, had bequeathed her, had scarce rescued himself and his attendants from the midnight massacre prepared for him at Benares;—when he was pent up with a petty garrison in the feeble fortress of Chunargur expecting the hourly assault of an elated and numerous enemy;—when his fate hung by a single

thread, and the hour of his extinction and that of the British name and nation in India would, according to all probable estimate, have been the same;—in that hour of perious expectation he cast many an anxious northward look to see his allies of Oude bringing up their powers, and hoped that the long-protected and much-favoured house of Sujah Dowla would have now repaid with voluntary gratitude the unclaimed arrears of generous kindness. As far as concerned the son of that Prince, and who by no fault of Mr. Hastings had least benefited by British interposition, he was not disappointed. That Prince who had been in the commencement of his reign robbed of his stipulated rights under the treaties of Allahabad and Benares, and had been unjustly manacled and fettered by that of Fryzabad, which restrained him from his due resort to national treasure for the necessary purposes of national defence and the just discharge of national incumbrances, found an additional motive for his fidelity in the accumulated honourable distresses and dangers of his allies. From the mother and grandmother of that Prince, enriched by his extorted spoils, and bound as they were by every public as well as private tie of gratitude and honour, Mr. Hastings looked, indeed, for a substantial succour; but he looked in vain. It was not, however, as passive and unconcerned spectators that they regarded this anxious and busy scene of gathering troubles. No,—to the remotest limits of their son's dominions their inveterate hate and detestation of the British race was displayed in every shape and form which malice could invent and treachery assume. In the immediate seats of their own protected wealth and power, at the revered threshold of their own greatness, in sight of their nearest servant who best knew their genuine wishes, and was by that knowledge best prepared to execute them—the British commander of a large force, marching to sustain the common interests of Great Britain and its allies, is repelled by the menace of actual hostility from the sanctuary to which he had fled in assured expectation of safety. At the same period another British commander, abandoning his camp to the superior force of a rebellious chief, linked in mischievous confederacy with the Begums, hears amidst the groans of his own murdered followers the gratulation of his enemies' success and his own defeat proclaimed in discharges of cannon from the perfidious walls of Fryzabad. And during all this dismay and discomfiture of our forces in the neighbourhood of their residence, the eunuchs, the slaves of their palace, under the very eye of our own insulted officers, array and equip a numerous and well-appointed force to brave us in the field.

“If these acts do indeed consist with good faith, or are such

light infractions of it as merit no considerable degree of public animadversion—then I resign Mr. Hastings to the unqualified censure of mankind and the overwhelming condemnation of your Lordships. But if to have connived at another's treachery at such a crisis would have been effectually to prove and proclaim his own;—if to have continued undiminished to the Begum the enormous fruits of her own original extortion and fraud, applied, as they recently had been, to the meditated and half-achieved purpose of our undoing, would have been an act of political insanity in respect to our own safety, and of no less injustice to our friend and ally, the proprietor of these treasures;—then was Mr. Hastings not warranted only, but required and without alternative or choice compelled, to apply that degree of lenient, sober, and salutary chastisement, which was, in fact, administered on this occasion. To have endured with impunity these public acts of hostile aggression would have been to expose our tame irrational forbearance to the mockery and scorn of all the Asiatic world. Equally removed from the dangerous extremes of unrelenting severity and unlimited concession, he had the good fortune to preserve in every part of India a dread of our power, a respect for our justice, and an admiration of our mercy. These are the three great links by which the vast chain of civil and political obedience is riveted and held together in every combination of human society. By the due exertion and display of such qualities as these, one faithful servant was enabled to give strength, activity, stability, and permanence, and at last to communicate the blessings of peace and repose to the convulsed members of our Eastern empire. This age has seen one memorable and much-lamented sacrifice to the extreme and excessive indulgence of the amiable virtues of gentleness and mercy.* The safety of our country, the order and security of social life, the happiness of the whole human race, require that political authority should be sustained by a firm, regular, and discriminate application of rewards and punishments."

Mr. Law was supposed to do his duty in a manly and effective manner; but Dallas was more polished, and Plomer more impressive. The leading counsel gained renown in his squabbles with Burke about evidence, rather than when he had such an opportunity of making a great oration as Cicero might have envied.

In the early stages of the trial his labour and his

* Alluding, I presume, to the fate of Louis XVI.

anxiety were dreadful, and he often expressed sincere regret that he had been concerned in it; but when he had become familiar with the subject, and public opinion, with which the Peers evidently sympathised, turned in favour of his client, he could enjoy the *éclat* conferred upon him from pleading before such a tribunal, for such a client, against such accusers.

At last on the 23rd of April, 1795, being the one hundred and forty-fifth day of the trial, and in the tenth year from the commencement of the crimination, he had the satisfaction to hear his client acquitted by a large majority of Peers; and he himself was warmly congratulated by his friends upon the happy event. It was expected that Burke would then have shaken hands with him; but still in Burke's sight Debi Sing could hardly have been more odious.

Conclusion of
Hastings's
trial.

Law had long the credit of making the celebrated epigram upon the leader of the impeachment—

Authorship
of the
epigram on
Burke.

" Oft have we wonder'd that on Irish ground
No poisonous reptile has e'er yet been found;
Reveal'd the secret stands of Nature's work,—
She saved her venom to produce her Burke."

But it was composed by Dallas, as I was told, spontaneously, by Dallas himself, when he was Chief Justice of the Common Pleas. A most rankling hatred continued to subsist between Burke and all Mr. Hastings's counsel. He regarded them as venal wretches, who were accomplices in murder after the fact; and they, in return, believed the accuser to have relentlessly attempted to bring down punishment upon innocence that he might gratify his malignity and his vanity. Yet they had never transgressed the strict line of their duty as advocates; and he always sincerely believed that he was vindicating the wrongs of millions of our

fellow-subjects in Asia. The three advocates considered their defence of Mr. Hastings as the most brilliant and creditable part of their career; and the accuser, undervaluing his writings against the French Revolution, which he thought only ephemeral pamphlets, exhorted Dr. Laurence, with his dying breath, to collect and publish an authentic report of the trial, saying, "By this you will erect a cenotaph most grateful to my shade, and will clear my memory from that load which the East India Company, King, Lords, and Commons, and in a manner the whole British nation (God forgive them), have been pleased to lay as a monument on my ashes."

Law's fees, considerably exceeding 3000*l.*, were a poor pecuniary compensation to him for his exertions and his sacrifices in this great cause; but he was amply rewarded by his improved position in his profession. When the trial began he had little more than provincial practice, and when it ended he was next to Erskine—with a small distance between them. Independently of the real talent which he displayed, the very notoriety which he gained as leading counsel for Mr. Hastings was enough to make his fortune. Attorneys and attorneys' clerks were delighted to find themselves conversing at his chambers in the evening with the man upon whom all eyes had been turned in the morning in Westminster Hall—a pleasure which they could secure to themselves by a brief and a consultation. From the oratorical school in which he was exercised while representing Warren Hastings, Law actually improved considerably in his style of doing business; and by the authority he acquired he was better able to cope with Lord Kenyon, who bore a strong dislike to him, and was ever pleased with an opportunity to put him down. This narrow-minded and ill-educated,

Law's great
advance in
business from
his fame as
counsel for
Hastings.

though learned and conscientious Chief Justice, had no respect for Law's classical acquirements, and had been deeply offended by the quick-eared Carthusian laughing at his inapt quotations and false quantities. Erskine, who had much more tact and desire to conciliate, was the Chief Justice's special favourite, and was supposed to have his "ear" or "the length of his foot." Law, having several times, with no effect, hinted at this partiality,—after he had gained much applause by his speech on the Begum charge, openly denounced the injustice by which he suffered. In the course of a trial at Guildhall he had been several times interrupted by the Chief Justice while opening the plaintiff's case, whereas Erskine's address for the defendant was accompanied by smiles and nods from his Lordship, which encouraged the advocate, contrary to his usual habit, to conclude with some expressions of menace and bravado. Law having replied to these with great spirit and effect, thus concluded:

He resents
Lord
Kenyon's
ill-usage of
him.

"Perhaps, gentlemen, I may without arrogance assume that I have successfully disposed of the observations of my learned friend, and that the strong case I made for my client remains unimpeached. Still my experience in this Court renders me fearful of the result. I dread a power with which I am not at liberty to combat. When I have finished, the summing-up is to follow."

Looking at Erskine he exclaimed,

—"Non me tua fervida terrent
Dicta ferox—"

He then made a bow to the Chief Justice, and as he sat down he added in a low, solemn tone,

—"Di me terrent et JUPITER HOSTIS."

Lord Kenyon, thinking that the quotation must be apologetical and complimentary, bowed again and

summed up impartially. When it was explained to him, his resentment was very bitter, and to his dying day he hated Law. But henceforth he stood in awe of him, and treated him more courteously.

At the breaking out of the French Revolution, Law joined the very respectable body of alarmist Whigs who went over to the Government, he being actuated, I believe, like most of them, by a not unreasonable dread of democratical ascendancy, rather than by any longing for official advancement. However, he refused offers of a seat in Parliament—even after the impeachment was determined. In society he acted the part of a strong Pittite, and he was accused of displaying “renegade rancour” against his former political associates:—but his friends asserted that “he had only been a Whig as Paley, his tutor, had been a Whig, and that he uniformly was attached to the principles of freedom, although he was always, for the good of the people, a friend to strong government.”

His position on the circuit fully entitled him to the appointment which he now obtained of Attorney-General of the County Palatine of Lancaster, and he was fairly destined to higher advancement, when Scott and Mitford, the present law officers of the Crown, should be elevated to the Bench.

Meanwhile he conducted some state prosecutions in the provinces. Mr. Walker, a respectable merchant at Manchester, and several others being indicted on the false testimony of an informer for a conspiracy to overturn the Constitution, and to assist the French to invade England, Law conducted the case for the Crown, and Erskine came *special* against him. At first the defendants seemed in great jeopardy, and Mr. Attorney of the County Palatine, believing the witness to be sincere, eagerly pressed for a conviction. A point

He is
opposed to
Erskine in
Rex v.
Walker.

arising about the admissibility of a printed paper, Erskine theatrically exclaimed, "Good God, where am I?"

Law (with affected composure): "In a British court of justice!"

Erskine (indignantly): "How are my clients to be exculpated?"

Law (in a still quieter tone): "By legal evidence."

Erskine (much excited): "I stand before the people of England for justice."

Law (bursting out furiously): "I am equally before the people of England for the protection of the people of England; if you rise in this tone, I can speak as loudly and as emphatically; there is nothing which has betrayed improper passion on my part; but no tone or manner shall put me down."

In the course of the trial the rivals were reconciled, and tried which could flatter best.

Law: "I know what I have to fear upon this occasion. I know the energy and the eloquence of my learned friend. I have long felt and admired the powerful effect of his various talents. I know the ingenious sophistry by which he can mislead, and the fascination of that look by which he can subdue the minds of those whom he addresses. I know what he can do to-day by remembering what he has done upon many other occasions before."

Erskine: "Since I entered the profession I have met with no antagonist more formidable than my learned friend to whom I am now opposed. While admiring his candour and courtesy, I have had reason to know the sharpness of his weapons and the dexterity of his stroke.

—'Stetimus tela aspera contra
Contulimusque manus; experto credite quantus
In clypeum assurgat, quo turbine torquet hastam.' *"

An acquittal took place, the guns which were to assist the French being proved to have been brought to fire a *feu-de-joie* on the King's recovery. The informer, being convicted of perjury, was sentenced at the same

* This quotation was afterwards applied by Mr. Canning to Lord Brougham.

assizes to stand in the pillory, and to be imprisoned two years in Lancaster Castle.*

Law was more successful in prosecuting Mr. Redhead
Prosecution
of Redhead
Yorke. Yorke for sedition, but this prosecution reflects much discredit upon the times in which it took place. The defendant, at a public meeting, had made a speech which he printed and circulated as a pamphlet in favour of a reform in Parliament—animadverting with severity upon some of the proceedings of the House of Commons, and accusing that assembly of corruption. He was therefore indicted for a conspiracy “to traduce and vilify the Commons’ House of Parliament, to excite disaffection towards the King and his government, and to stir up riots, tumults, and commotions in the realm.” Mr. Law, in opening the case to the jury, laid down that “whatever speech or writing had a tendency to lessen the respect of the people for the House of Commons was unlawful.” He said, “In no country can a government subsist which is held in contempt. Does not every government under the sun take means, and must it not take means, against such degrading insults? Why in God’s name is the united dignity of the empire to be insulted in this way? What is the practical consequence of ridicule thrown on such a body? From the moment that men cease to respect they cease to obey, and riot and tumult may be expected in every part of the kingdom.”

The defendant delivered a very able and temperate address to the jury; but he was repeatedly interrupted by the Judge when making observations which we should think quite unexceptionable. A specimen may be both amusing and instructive:—

Defendant: “You will recollect that the House of Commons in one day, in the midst of a paroxysm of delusion, threw the liberties of the people at the foot of the throne—I mean by the

* 23 St. Tr. 1055. LIVES OF CHANCELLORS, vi. 465.

suspension of the Habeas Corpus Act. You will recollect that in consequence of that suspension, every man was unsafe in his person—every man even had reason to tremble for his life.”

Rooke, J.: “I must check you, Mr. Yorke, when you talk of the House of Commons throwing the liberties of the people at the foot of the throne.”

Defendant: “If your Lordship had permitted me, I should have explained that idea.”

Rooke, J.: “I sit here upon my oath, and I cannot suffer any sentiment to pass that is at all disgraceful to that House.”

Defendant: “It was far from my intention. I was only stating that the *Habeas Corpus Act* was suspended, and was about to state the reason why. I consider the *Habeas Corpus Act* and the Trial by Jury as the firmest bulwarks of our liberties:—certain it is that the legislature thought the country in danger—that it was necessary to strengthen the arm of government, and in some degree to weaken the liberties of the people. May not I, with your Lordship’s permission, state what my perception is of the constitution, in order that I may point out where the necessity for reform lies?”

Rooke, J.: “Annual parliaments and universal suffrage is the general principle upon which the witnesses say you have gone. Now annual parliaments and universal suffrage are contrary to the established constitution of the country.”

Defendant: “Sir Henry Spelman, treating of the Anglo-Saxon government, says that the *Michel-Gemote* met in *annuo parlamento*. Here is the Parliamentary Roll of 5 Ed. II.”

Rooke, J.: “The Crown called a parliament annually without an annual election. Septennial parliaments are the law of the land, and I cannot hear you go on in that way.”

Defendant: “Septennial parliaments are unquestionably an actual law of the land; but what I mean to state is, whether, according to the principles of the Revolution, they ought to be so. May I not state it as my opinion?”

Rooke, J.: “No.”

Defendant: “Mr. Pitt himself and most of the great men have held the same language.”

Rooke, J.: “Not in a court of justice. I am bound by my oath to abide by the law, and I cannot suffer anybody to derogate from it.”*

After a most intolerant reply from Mr. Law and a

* Rooke was a very meek man; and other Judges would have held similar at that time, I dare say, most of the language.

summing up, in which the judge re-stated his doctrines with respect to finding fault with the existing constitution of the House of Commons, the defendant was found guilty and sentenced to two years' imprisonment in Dorchester gaol. What must have been the state of public feeling when such proceedings could take place without any censure in parliament, and with very little scandal out of it? The reign of terror having ceased, and Englishmen being again reconciled to liberty, Mr. Redhead Yorke was much honoured for his exertions in the cause of parliamentary reform, and he was called to the bar by the Benchers of the Middle Temple.*

Law gained very great credit from all sensible men from his conflict with Lord Kenyon about *forestalling* and *regrating*. He had studied successfully the principles of political economy, and he admirably exposed the absurd doctrine that the magistrate can beneficially interfere in the commerce of provisions; but he had the mortification to see his client sentenced to fine and imprisonment for the imaginary crime of buying with a view to raise the price of the commodity.†

I now come to what is considered the most brilliant passage of the life of the future Lord Ellenborough—his triumph over Sheridan at the trial of Lord Thanet and Mr. Fergusson for assisting in the attempt to rescue Arthur O'Connor. This trial excited intense interest. The government was most eager for a conviction, while the honour of the Whig party was supposed to require an acquittal. Several police-officers, examined for the Crown, swore that both defendants had taken an active part in favouring O'Connor's escape in the court at Maidstone; but they were flatly contradicted by several respectable witnesses, who were corroborated by Mr. Whitbread;

A.D. 1799.
Law's
triumph
over
Sheridan.

* 25 St. Tr., 1003-1154.

† R. v. Waddington, 1 East, 166.

and if the defendants' case had been closed there, in all probability they would have got off with flying colours. To make security double sure, Mr. Sheridan was called, and being examined by Erskine, he gave his evidence in chief in a very collected and clear manner; but being cross-examined by Law, who had fostered a spite against him ever since their quarrel during Hastings's trial, he lost his head entirely and brought about a verdict of GUILTY. To convey a proper notion of this encounter, the cross-examination must be given at length :—

L. : "I will ask you whether you do or do not believe that Lord Thanet and Mr. Fergusson meant to favour O'Connor's escape?"

S. : "Am I to give an answer to a question which amounts only to opinion?"

L. : "I ask as an inference from their conduct, as it fell under your observation, whether you think Lord Thanet or Mr. Fergusson meant to favour Mr. O'Connor's escape—upon your solemn oath?"

S. : "Upon my solemn oath, I saw them do nothing that could be at all auxiliary to an escape."

L. : "That is not an answer to my question."

S. : "I do not wish to be understood to blink any question, and if I had been standing there and been asked whether I should have pushed or stood aside, I should have had no objection to answer that question."

L. : "My question is, whether, from what you saw of the conduct of Lord Thanet and Mr. Fergusson, they did not mean to favour the escape of O'Connor, upon your solemn oath?"

S. : "The learned counsel need not remind me that I am upon my oath; I know as well as the learned counsel does that I am upon my oath; and I will say that I saw nothing auxiliary to that escape."

L. : "After what has passed, I am warranted in reminding the honourable gentleman that he is upon his oath. My question is, whether, from the conduct of Lord Thanet and Mr. Fergusson, or either of them, as it fell under your observation, you believe that either of them meant to favour O'Connor's escape?"

S. : "I desire to know how far I am obliged to answer that question. I certainly will answer it in this way, that from what they did, being a mere observer of what passed, I should not

think myself justified in saying that either of them did. Am I to say whether I think they would have been glad if he had escaped? That is what you are pressing me for."

L.: "No man can misunderstand me; I ask whether, from the conduct of Lord Thanet and Mr. Fergusson, or either of them, as it fell under your observation, you believe, upon your oath, that they meant to favour the escape of O'Connor?"

S.: "I repeat it again, that from what either of them did, I should have had no right to conclude that they were persons assisting the escape of O'Connor."

L.: "I ask you again, upon your oath, whether you believe, from the conduct of Lord Thanet or Mr. Fergusson, that they did not mean to favour the escape of O'Connor?"

S.: "I have answered it already."

Lord Kenyon: "If you do not answer it, to be sure we must draw the natural inference."

S.: "I have no doubt that they *wished* he might escape; but from anything I saw them do, I have no right to conclude that they did."

L.: "I will have an answer: I ask you again, whether, from their conduct as it fell under your observation, you do not believe they meant to favour the escape of O'Connor?"

S.: "If the learned gentleman thinks he can entrap me, he will find himself mistaken."

Erskine.: "It is hardly a legal question."

Lord Kenyon: "I think it is not an illegal question."*

L.: "I will repeat the question, whether, from their conduct, as it fell under your observation, you do not believe that they meant to favour the escape of O'Connor?"

S.: "My belief is, that they *wished* him to escape; but from anything I saw of their conduct on that occasion, I am not justified in saying so."

Erskine in vain tried to remedy the mischief by re-examination:—

"You were asked by Mr. Law whether you believed that the defendants wished or meant to favour the escape of Mr. O'Connor; I ask you, *after what you have sworn, whether you believe these gentlemen did any act to rescue Mr O'Connor?*"

S.: "Certainly not."

* I think it is clearly an illegal question, and I am astonished that Erskine so quietly objected to it. I should at once overrule such a question; for it does not inquire into a fact, or any

opinion upon matter of science, but asks the witness, instead of the jury, the inference as to the guilt or innocence of the accused to be drawn from the evidence.

E. : "You have stated that you saw no one act done or committed by either of the defendants indicative of an intention to aid O'Connor's escape?"

S. : "Certainly."

E. : "I ask you, then, whether you believe that they did take any part in rescuing Mr. O'Connor?"

S. : "Certainly not."

However, the jury could never get over the wish that O'Connor should escape;* so both defendants were convicted, and although their right arms were not cut off—the specific punishment to which it was said they were liable—they were sentenced to heavy fines and long imprisonment.†

There had hitherto been a certain mistrust of Law, on account of his early Whiggery; but he was now hailed as a sincere Tory, and his Law reconciled to the Tories. promotion was certain.

For several more years, however, no vacancy occurred, and his highest distinction was being leader of the Northern Circuit. There, indeed, he reigned supreme, without any brother being near the throne. He had completely supplanted Serjeant Cockell, who, notwithstanding a most curious nescience of law, had for some time been profanely called "the Almighty of the North." Some juniors had taken the coif without emerging from obscurity, and the only other silk gown on the circuit was worn by "Jemmy Park," whom Law could twist round his finger at any time. Scarlett, in stuff, began to show formidable powers; but as yet was hardly ever trusted with a lead. Being so decidedly the "Cock of the Circuit," it is not wonderful that Law should crow very fiercely. According to all accounts, he did become

* Sheridan used afterwards to pretend that he had the best of it, and that he put Law down effectually. Among other questions and answers not to be found in the full and accurate report of the short-hand writer who was present, he

used to relate—"When Law said, 'Pray, Mr. Sheridan, do answer my question, without point or epigram,' I retorted, 'You say true, Mr. Law; your questions are without point or epigram.'"

† 27 St. Tr. 821.

excessively arrogant, and he sometimes treated rudely both his brother barristers and others with whom he came into collision.

He was always ready, however, to give satisfaction ^{His readiness to fight.} for any supposed affront which he offered. Once he happened, at York, to be counsel for the defendant in an action on a horse-race, the conditions of which required that the riders should be "gentlemen." The defence was that the plaintiff, who had won the race, was not a "gentleman." A considerable body of evidence was adduced on both sides, and Mr. Law commented upon it most unmercifully. The jury found for the defendant that the plaintiff was "not a gentleman." The defeated party blustered much, and threatened to call the audacious advocate to an account. Law, putting off his journey to Durham for a day, walked about booted and spurred before the coffee-house, the most public place in York, ready to accept an invitation into the field or to repel force by force, because personal chastisement had likewise been threatened. No message was sent, and no attempt was made to provoke a breach of the peace.

CHAPTER XLVIII.

CONTINUATION OF THE LIFE OF LORD ELLENBOROUGH TILL
HE WAS APPOINTED LORD CHIEF JUSTICE.

THE great Northern leader had reached his fifty-first year, and still the political promotion which he so earnestly desired never opened to him. He is made Attorney-General. Having till then, in his own language, "crawled along the ground without being able to raise himself from it," in the language of his friend Archdeacon Paley, "he suddenly rose like an aéronaut.*"

Mr. Pitt, in 1801, stepped down from the premiership, and, a new arrangement of legal offices following, Mr. Addington, the new minister, sent for Mr. Law, and offering him the Attorney-Generalship, ob- Feb. 1801. served, "That as his ministry might be of short duration, and the sacrifice to be made considerable, comprising the lead of the Northern Circuit, to which there was no return, he would not expect an immediate answer, but hoped that in two days he might receive one?" "Sir," said Mr. Law, "when such an offer is made to me, and communicated in such terms, I should

* Paley had been chaplain to Law's father, the bishop, who gave him his first preferment, and there was the strictest intimacy between Law and Paley through life. The former, when Chief Justice, has been heard to say, "Although I owed much to Paley as an instructor (for he was practically my tutor at college), I was much more indebted to him for the independent tone of mind which I acquired through his conversation and example: Paley formed

my character; and I consider that I owe my success in life more to my character than to any natural talents I may possess." Law corrected for Paley the proof-sheets of some of his works as they were passing through the press; and in Law's house in Bloomsbury Square there was an apartment which went by the name of "Paley's room," being reserved for the Archdeacon when he paid a visit to the metropolis.

think myself disgraced if I took two days, two hours, or two minutes to deliberate upon it; I am yours, and let the storm blow from what quarter of the hemisphere it may, you shall always find me at your side."

When he attended in the King's closet to kiss hands and to be knighted, George III., who had been recently in a state of derangement and was as yet only partially recovered, after bidding him "rise, Sir Edward," said to him, "Sir Edward, Sir Edward, have you ever been in parliament?" and being answered in the negative, added "Right, Sir Edward; quite right, Sir Edward; for now when you become my Attorney-General, Sir Edward, you will not eat your own words, Sir Edward, as so many of your predecessors have been obliged to do, Sir Edward."

In those Ante-Reform-Act days the Government always—easily, and as a matter of course—provided seats in the House of Commons for the law-officers of the Crown, they paying only 500*l.* as a contribution to the Treasury-borough fund. A considerable number of seats were under the absolute control of the minister for the time being, and others, for a consideration in money or money's worth, were placed by borough proprietors at his disposal. The difficulty of getting and keeping a seat in the House of Commons, which now so much influences the appointment to offices, was then never thought of. In consequence, the minister certainly had a more unlimited command of talent and fitness for public service. No one would now think of going back to the "nomination" system, its conveniences being greatly outweighed by its evils; but the experiment may hereafter be made of allowing certain officers of the Crown, as such, to have voice without vote in the House of Commons.

The new Attorney-General, having deposited his 500*l.* with the Secretary to the Treasury, was returned

for a close borough, and on the 2nd of March, 1801, he was sworn in at the table.

He seems to have imbibed the doctrine for which I have heard the great Lord Lyndhurst strenuously contend, that no allusion ought to be made in parliament to any political opinions entertained or expressed by any individual before going into parliament. Having openly and zealously belonged to the Whigs till 1792, —after changing sides, Law was eager to embrace every opportunity of attacking or sneering at that party in their subsequent prostrate condition.

He entered St. Stephen's Chapel too late in life to be a skilful debater; but as often as he spoke he commanded attention by the energy of his manner and the rotundity of his phrases (reminding the old members of Thurlow), and he gave entire satisfaction to his employers. His maiden speech was made in support of the bill for continuing martial law in Ireland, which gave courts-martial jurisdiction over all offences, with a power of life and death. He contended that "this measure had led to the extinction of rebellion in that country, and that to its operation the House owed their power of debating at that moment, for without it the whole empire would have been involved in one common ruin. The aspect of the late rebellion he conceived to be unequalled in the history of any country; never before had rebellion so aimed at the destruction of all that is venerable in political institutions or sweet in domestic life—of all the social affections which unite man to man—of all the sacred sanctions which bind man to his Maker."* Coercive measures for Ireland are always well relished in the House of Commons, and, on a division, eight only mustered in the minority.

Mr. Attorney next argued the necessity for suspending the Habeas Corpus Act in England, asserting that the

* 35 Parl. Hist. 1044.

March 18.

constitution of the country would not be safe if the bill which was now moved for were not passed. He said "he would maintain that it was a most lenient measure, and particularly to those against whom it was intended. To prevent an outbreak of treason, was mercy to the traitors. Because crimes were not judicially proved, their existence must not be denied. Had it not been for subsequent events, the acquitted and sainted Arthur O'Connor, long the idol of the other side of the House, now confessing his guilt—who had been so lauded as to cause universal nausea—would have gone to his grave loaded with the unmixed praises of his compurgators."* The minority now amounted to forty-two.

When the Rev. John Horne Tooke was nominated as member for the borough of Camelford, the question arose whether a priest in orders was qualified to sit in the House of Commons?

Mr. Attorney learnedly argued for the negative, and zealously supported the bill to prevent such an occurrence in future. Mr. Horne Tooke had his revenge, and excited a laugh at the dogmatizing method of his opponent, which he pronounced to be "only fit for the pulpit, so that an exchange might advantageously be made between the Law and the Church."†

Sir Edward's last speech in the House of Commons was on the claim made by the Prince of Wales against the King for an account of all the revenues of the Duchy of Cornwall during his Royal Highness's minority. The ground taken by him was, that the King had a set off for his Royal Highness's board and education, which overtopped the demand. "Can it be contended," said he, "that the Prince of Wales, after having been maintained one-and-twenty years in all the splendour becoming his elevated rank, may at last call the King to an account for all the money received for that purpose

* 35 Parl. Hist. 1288.

† 35 Parl. Deb. 1335, 1398.

during his minority? The Duchy of Cornwall was granted by Edward III. to his son, that he himself might be relieved from the burthen which had previously been thrown upon him and other kings of maintaining their heirs at their own expense. It has been clearly shown that the money advanced to this Prince of Wales during his minority exceeds all his revenues, and that the balance is against him. The elegant accomplishments and splendid endowments of this '*Hope of England*' prove that he has experienced the highest degree of parental care, tenderness and liberality."* This controversy, though often renewed, was never brought to a final decision; but the arguments seem conclusively to prove that the revenues of the Duchy of Cornwall belong to the Prince of Wales during his minority, and that he is entitled to an account of them on his coming of age.

The negotiations for a peace with Napoleon as First Consul of the French Republic were now going on, and parliamentary strife was allayed till the result should be known, all parties agreeing that in the mean time no attempt should be made to subvert the government of Mr. Addington. Before this event Sir Edward Law was transferred to another sphere of action.

During the short period of his Attorney-Generalship no prosecution for treason or any political offence arose, but in his official character he ^{Governor} ^{Wall's Case.} did conduct one of the most memorable prosecutions for murder recorded in our juridical annals. It brought great popularity to him and the government of which he was the organ, upon the supposition that it presented a striking display of the stern impartiality of British jurisprudence; but after a calm review of the evidence I fear it will rather be considered by posterity as an instance of the triumph of vulgar prejudice over

* 36 Parl. Hist. 433.

humanity and justice. The alleged crime had been committed twenty years before the trial, and, except in the case of Eugene Aram, there never had been known such an illustration of the doctrine of our law, that in criminal matters no lapse of time furnishes any defence, while all civil actions are barred by short periods of prescription; upon the supposition that the evidence may have perished which might have proved the charge to be unfounded. JOSEPH WALL, who had served from early youth as an officer in the army, and had always been distinguished for gallantry and good conduct, was, during the American War, appointed Governor of Goree, on the coast of Africa. With a very insufficient garrison, and with very slender military supplies, he had to defend this island from the French, who planned expeditions against it from their neighbouring settlement of Senegal. Governor Wall performed his duty to his country in the midst of formidable difficulties, with firmness and discretion—and the place intrusted to him was safely preserved from all perils till peace was re-established. He was then about to return home, in the expectation of thanks and promotion, but great discontents existed among the troops forming the garrison, by reason of their pay being in arrear. This grievance they imputed to the Governor, and they resolved that he should not leave the island till they were righted. Benjamin Armstrong, a sergeant, their ringleader, was brought by him irregularly before a regimental court-martial, and sentenced to receive 800 lashes. Although this whipping was administered with much severity, he in all probability would have recovered from it if he had not immediately after drunk a large quantity of ardent spirits: but his intemperance, together with the wounds inflicted upon him by the flagellation, and an unhealthy climate, brought on inflammation and fever, of which he died. Order was restored, and the Governor

returned to England. However, representations were made to the authorities at home respecting the irregularity and alleged cruelty which had been practised, and exaggerated accounts of the proceeding were published in the newspapers, stating among other things that the Governor had murdered Armstrong and several other soldiers by firing them from the mouths of cannon. A warrant was issued against him by the Secretary of State, he was arrested by a King's messenger, and he made his escape as they were conveying him from Bath in a chaise and four. He immediately went abroad, and he continued to reside on the continent till the peace of Amiens—when on the advice of counsel, he came to England, wrote a letter to the Secretary of State announcing his return, and surrendered himself to take his trial.

I am old enough to remember the unexampled excitement which the case produced. The newspapers were again filled with the atrocities of Governor Wall, and a universal cry for vengeance upon him was raised. Among the higher and educated classes a few individuals who took the trouble to inquire into the facts, doubted whether he was liable to serious blame, notwithstanding the circumstance against him that he had fled from justice; but the mass of the population, and particularly the lower orders, loudly pronounced Governor Wall guilty before his trial, and clamoured for his speedy execution.

The trial (if trial it may be called) did come on at the Old Bailey on the 20th of January, 1802, under a special commission, issued by the authority of 33 Hen. VIII., c. 23. The Attorney-General, who appeared as public prosecutor, was conscientiously convinced of the prisoner's guilt, and, free from every bad motive, was only desirous to do his duty. He propounded the law of murder very correctly to the jury, and I cannot say

that he suppressed any evidence, or put any improper question to any witness, but he showed a determined resolution to convict the prisoner. I should not like to be answerable for such a conviction.

Then a very young man, just entered at Lincoln's Inn, I was present at the trial, and, carried away by the prevalent vengeful enthusiasm, I thought that all was right; but after the lapse of half a century, having dispassionately examined the whole proceeding, I come to a very different conclusion.

I have now a lively recollection of the effect produced by the opening speech of the Attorney-General, to which, as the law then stood, no answer by counsel was permitted. With professions of candour he narrated the facts in a tone of awful solemnity, so as to rouse the indignation of the jury. He particularly dwelt upon the fact, that the men employed to inflict the punishment were not the drummers of the regiment, but African negroes, and he pronounced the punishment wholly illegal, as the sentence could only have been passed by a general court martial assembled according to the "Articles of War." He allowed, indeed, that if there was a dangerous mutiny all forms might be dispensed with, but insisted that the onus lay on the prisoner to make this clearly out,—and, by anticipation, he sought to discredit the witnesses to be called for the defence. He dwelt with much force upon the circumstance that a despatch written by the prisoner, soon after his return to England, to Lord Sidney, the Secretary of State, was silent as to the supposed mutiny; he palliated the resolution of the soldiers not to permit the Governor to leave the island till their arrears were paid, by observing that, "after his departure, a vast ocean would separate them from their debtor, and considering the precariousness of human life, and particularly in that unhealthy settlement, if they did not press their demand at that period

it was possible they might not be in a situation afterwards to urge it with any beneficial effect to themselves." These were the conditions on which it was said by the Attorney-General the prisoner was entitled to an acquittal: "It will be incumbent on him to show the existence of crime in the alleged mutineer, the impossibility of regular trial, and the reasonable fitness of the means substituted and resorted to in the place of trial. All these things it will be incumbent on the prisoner to prove. It may likewise be proper for him, in further exculpation of his conduct, to show how he withdrew himself from justice at the time when he was first apprehended; for it should seem that if he was an innocent man, this was above all others the convenient time to prove his innocence. It will give me great satisfaction if he is able to establish that there existed such circumstances as will make the crime with which he is charged not entitled to be denominated and considered as murder."

The witnesses for the prosecution represented that when Armstrong and his associates came up, demanding their arrears, they were unarmed, and that they returned to their quarters when ordered to do so by the Governor, so that no extraordinary measures of severity were necessary—but they admitted that the sentence had been pronounced by a drumhead court-martial, which the Governor summoned, and they admitted that although where a mutiny is made the subject of inquiry by a general court-martial, it is officially returned—if a mutiny is repressed at the instant, and a drumhead court-martial is held, it is not returned if the punishment be short of death. No attempt was made to show that the prisoner had any spite against Armstrong, or that he was actuated by any improper motive.

When called upon for his defence, Governor Wall confined himself to a simple narrative, which, if true,

showed that Armstrong had been guilty of most culpable conduct, and that after he had led back the men to their quarters he still entertained very dangerous designs.

Mrs. Lacy, the widow of the succeeding Governor who had been second in command when the affair happened; stated on her oath that Armstrong and the seventy soldiers he led on threatened Governor Wall, and swore that if he did not satisfy their demands they would break open the stores and satisfy themselves. She was strongly corroborated by eye-witnesses respecting the dangerous character of the mutiny, and by the opinion of the other officers in the garrison, that extraordinary measures must immediately be taken to repress it. Several general officers who had known the prisoner all his life, and other respectable witnesses, gave him a high character for good temper and humanity. But one of them being cross-examined on the subject by the Attorney-General, said that "he had not heard this character of him on the island of Goree," and a witness called in reply to say that a witness examined for the prisoner ought not to be believed on his oath, said that the prisoner's witness was "reckoned a lying, shuffling fellow."

The jury, after half an hour's deliberation, returned a verdict of *Guilty*, which was received with loud acclamation, and, according to the law as it then stood, the sentence of death, which was immediately passed, was ordered to be carried into execution on the second day after the trial.

Notwithstanding the general satisfaction testified, many were shocked by this proceeding, and petitions for mercy were presented to the King. The case being examined by Lord Eldon, and other members of the Government, there was a sincere desire among them to save the unfortunate gentleman, and a respite for two days was sent to give time for further deliberation—

but there arose such a burst of public resentment as was never known on such an occasion in this country. Still a further respite was granted for three days more, in the hope that reason and humanity might return to the multitude. On the contrary, an open insurrection was threatened, and it was said that the common soldiers and non-commissioned officers of the three regiments of Guards, who would have been called in to quell it, had declared that they would join the rioters, and assist with their own hands in executing the sentence of the law on the murderer of Sergeant Armstrong. The Government had not the courage to grant a further respite, and Governor Wall was hanged on a gibbet in front of the gaol of Newgate, amidst the shouts and execrations of the most numerous mob ever assembled in England to witness a public execution.*

Sir Edward Law was now a good deal disturbed by the near prospect of a vacancy in the office of Chief Justice of the King's Bench. Lord ^{Illness of} Kenyon, having made a vain effort to dis- ^{Lord} ^{Kenyon.}charge his judicial duties in the beginning of Hilary Term, had been ordered by his physician to Bath, and from the accounts of his declining health, it was well understood that he could never sit again. The peace with France being approved of in both Houses, the Catholic question having gone to sleep, the King's health being restored, and Mr. Addington's government being stronger than any one ever expected to see it, Sir Edward Law would not have been sorry to have continued in the office of Attorney-General, but he could

* 28 St. Tr. 51-178. A writer, who highly approves of the execution of Governor Wall, says, "His inhuman cruelties had so hardened the multitude, that they hailed with exulting shouts his appearance on the scaffold, and

triumphed in the knowledge that neither station, nor lapse of time, nor distance, would shield a convicted murderer from his just doom."—Townsend's Judges, vol. i. 328.

not bear the idea of any one being put over his head, and rumours reached him that as he could not be considered to have won a right to the office of Chief Justice, from having served only a few months as a law officer of the Crown, it was to be conferred on Erskine, who, since the peace, had been coquetting with the new Prime Minister. I happened to be sitting in the students' box in the Court of King's Bench, on the 5th April, 1802, when a note announcing Lord Kenyon's death was put into the Attorney-General's hand. I am convinced that at this time he had received no intimation respecting the manner in which the vacancy was to be filled up, for he looked troubled and embarrassed, and immediately withdrew.

He did not again appear in Court till the 12th of April, when he was sworn in and took his seat as Chief Justice.* Mr. Addington had the highest opinion of him, and never had hesitated about recommending him for promotion. On going home from Court, after hear-

ing of Lord Kenyon's death, Mr. Attorney found a letter from the Prime Minister, announcing that the King would be advised to appoint him, and expressing a confident belief that "when the royal pleasure was taken his Majesty would willingly sanction an appointment likely to be so conducive to the upright and enlightened administration of justice to his subjects." Immediately after Lord Kenyon's funeral, the King's pleasure was formally taken, with the anticipated result, and his Majesty cordially agreed to the proposal that the new Chief Justice should be raised to the peerage.

It was first necessary that he should submit to the degree of the coif, only serjeants-at-law being qualified to preside in the King's Bench, or to be Judges of Assize. In compliment to the peace concluded by his

Law is
made Chief
Justice of
England
and a Peer.

* 2 East, 253.

patron with the First Consul of the French Republic, he took for the motto of his rings,

"Positis mitescunt secula bellis."

For his barony he chose from a small fishing village on the coast of Cumberland a sounding title, to which there could be no objection, except that having very often officially to sign it, he was forced afterwards to write many millions of large characters, beyond what would have been necessary if he had been contented with a word of two syllables, without any unphonetic consonants.*

* At Ellenborough there is a small estate which had been in his mother's family since the reign of Henry II., and it was supposed that he was partly induced to take this title as a mark of respect to her memory. I have since received from a Cumberland gentleman the following account of the origin of this title. Mrs. Law, his mother, was staying at Mr. F. Curwin's, at his seat in Cumberland; and though she was very near her time, she imprudently went in

her carriage to take an airing; she had proceeded some distance when the pains of labour came on, and it became necessary to look out for an asylum. In this extremity the village of Ellenborough was nearest; Mrs. Law was taken there, and in a cottage was speedily delivered of a child. This child was Sir Edward Law, Chief Justice of England, and when he became a Peer, from the above circumstance the title was decided to be Ellenborough.

CHAPTER XLIX.

CONTINUATION OF THE LIFE OF LORD ELLENBOROUGH TILL HE
BECAME A CABINET MINISTER.

LORD ELLENBOROUGH'S appointment was generally approved of, and he had the felicity of being promoted without the hostility of an effete predecessor, or the grudge of a disappointed rival, or the envy of contemporaries whom he had surpassed.

His professional qualifications were superior to those of any other man at the bar. Having an excellent head for law, by his practice under the bar he was familiarly versed in all the intricacies of special pleading: although not equally well acquainted with conveyancing, he had mastered its elements, and he could *pro re natâ* adequately understand and safely expatiate upon any point of the law of real property which might arise. He was particularly famous for mercantile law; and a thorough knowledge of the rules of evidence, and of the principles on which they rested, made his work easy to him at *nisi prius*. Not only had he the incorruptibility now common to all English Judges, but he was inspired by a strong passion for justice, and he could undergo any degree of labour in performing what he considered his duty. He possessed a strong voice, an energetic manner, and all physical requisites for fixing attention and making an impression upon the minds of others. I must likewise state as a great merit that he could cope with and gain an ascendancy over all the counsel who addressed him, and that he never had a favourite—

His qualifications as a Judge.

dealing out with much impartiality his rebuffs and his sarcasms. The defects in his judicial aptitude were a bad temper, an arrogance of nature, too great a desire to gain reputation by despatch, and an excessive leaning to severity of punishment.

He did not by any means disappoint the favourable anticipations of his friends, although the blemishes were discoverable which those dreaded who had more closely examined his character. The day when he took his seat in court as Chief Justice, he said privately to an old friend that "his feelings as a barrister had been so often outraged by the insults of Lord Kenyon, he should now take care that no gentleman at the bar should have occasion to complain of any indignity in his court, and that he hoped any one who thought himself ill-used would resent it." Yet before the first Term was over, he unjustifiably put down a hesitating junior, and ever after he was deeply offended by any show of resistance to his authority. By good fortune he had very able *puisnes*, so that the ^{His puisnes.} decisions of the Court of King's Bench while he was Chief Justice are entitled to the highest respect. Grose was his coadjutor of least reputation; but this supposed weak brother, although much ridiculed,* when he differed from his brethren, was voted by the profession to be in the right. All the others—Lawrence, Le Blanc, Bayley, Dampier, Abbott, Holroyd—were amongst the best lawyers that have appeared in Westminster Hall in my time. It was a great happiness to practise before them, and I entertain a most affectionate respect for their memory.

Lord Ellenborough did not attempt to introduce any reform in the practice of his court, or in the pre-

* "Qualis sit Grocus Iudex uno accipe versu
Exclamat, dubitat, balbutit, stridet et errat."

"Grocus with his lantern jows
Throws light upon the English laws."

paration of the preliminary pleadings. The writ of Latitat was still as much venerated as the writ of Habeas Corpus, and all the arbitrary and fantastic rules respecting declarations, pleas, replications, rejoinders, surrejoinders, rebutters and surrebutters, which had arisen from accident or had been devised to multiply fees, or had been properly framed for a very different state of society, were still considered to be the result of unerring wisdom, and eternally essential to the due administration of justice. Antiquity was constantly vouched as an unanswerable defence for doctrines and procedure which our ancestors, could they have been summoned from their graves, would have condemned or ridiculed. One obstacle to legal improvement, now removed, then operated most powerfully, though insensibly—that antiquated juridical practice could not be touched without diminishing the profits of offices which were held in trust for the Judges or which they were permitted to sell.* The grand foundation of legal improvement was the bill for putting all the subordinate officers in the courts at Westminster, as well as the Judges, on a fixed salary—allowing fees of reasonable amount to be paid into the public treasury towards the just expenses of our judicial establishment. The Benthamites would go still further and abolish court fees altogether; but there seems no hardship in the general rule that the expense of litigation shall be thrown upon the parties whose improper conduct must be supposed to have occasioned it. Arbitrators are paid by the party found to be in the wrong, and the burthen of maintaining the Judges appointed

* I never saw this feeling at all manifest itself in Lord Ellenborough except once, when a question arose whether money paid into Court was liable to poundage. I was counsel in the cause, and threw him into a furious passion by strenuously resisting the demand. The

poundage was to go into his own pocket—being payable to the chief clerk—an office held in trust for him. If he was in any degree influenced by this consideration, I make no doubt that he was wholly unconscious of it.

by the State ought not to be borne by those who habitually obey the law, and spontaneously render to every man his own.

Upon the accession of Lord Ellenborough, the absurd doctrines about forestalling and regrating were understood, like prosecutions for witchcraft, to be gone for ever on account of the manly stand he had made against them under Lord Kenyon, and there has not since been any attempt to revive them. The internal free trade in corn was thus practically secured, although the doctrine that free importation of corn ought to be allowed from foreign countries did not follow for near half a century, and Lord Ellenborough himself would probably have regarded with as much horror such an importation, as did his predecessor a corn merchant buying wheat at Uxbridge to be resold in Mark Lane. :

I do not think that on any other subject the principles were altered by which the Court of King's Bench now professed to be guided. Lord Ellenborough adhered to the rule that in ejectment the legal estate shall always prevail, and that an outstanding term might be set up unless it might be fairly presumed to be extinguished or surrendered, or the defendant was estopped from contesting the title of the claimant. A more liberal and scientific mode, however, was restored of treating commercial questions, the civil law and foreign jurists were quoted with effect, and the authority of Lord Mansfield was again in the ascendant.

Chief Justice Ellenborough's judgments connected with politics and history I propose hereafter to introduce chronologically as I trace his career after he mounted the bench. At present I think it may be convenient to mention some of the more important questions before him, which derive no illustration or interest from the time when they arose, or from any concomitant events.

In now looking over the bulky volumes of "*East*" and of "*Maule and Selwyn*," it is wonderful to observe how many of the decisions which they record may already be considered obsolete. A vast majority of them are upon rules of practice and pleading, since remodelled under the authority of the legislature—upon Sessions' law respecting settlements, rating, and bastardy, which has been entirely altered by successive statutes—upon the old Quo Warranto law, swept away by the Parliamentary Reform Act and the Municipal Corporations' Amendment Act—upon the law of tithes, abolished by the Tithe Commutation Act—and upon concerted commissions of bankruptcy and the validity of petitioning creditors' debts, which have become immaterial by the new Bankrupt and Insolvent Codes.

I proceed to select a few cases, decided by Lord Ellenborough, which depend upon the common law and the eternal principles of right and wrong, and which must ever be interesting and instructive to those who wish to have a liberal knowledge of our jurisprudence.

In *Rodney v. Chambers** the important question arose upon the legality of a covenant by a husband, who had been separated from his wife and had been reconciled to her, to pay a certain sum of money annually to trustees for her support in case of a future separation. His counsel contended that such a covenant was contrary to public policy, as tending to encourage the wife to leave her husband, and to disturb the harmony of conjugal life.

Lord Ellenborough: "I should have thought that it would have fallen in better with the general policy of the law to have prohibited all contracts which tend to facilitate the separation of husband and wife; but we cannot reject the present on that ground without saying that all contracts which have the same

Lord Ellenborough's decisions.

Validity of deeds of separation.

* 2 East, 283.

tendency are vicious—which would extend, for aught I can see, to provisions for pin-money or any other separate provision for the wife, which tends to render her independent of the support and protection of her husband. Deeds of separation are not illegal, and I cannot see how it is more illegal to provide for future than for present separation.” [*Judgment against the husband.*]

Whether in consequence of this deed, or from some other cause, the wife soon after separated from her husband and had an affair of gallantry with a military officer. An action for *crim. con.* being brought, the defence was set up that the plaintiff had voluntarily renounced the society of his wife, and therefore that this action could not be maintained, the *gravamen* of which is the *per quod consortium amisit*; but Lord Ellenborough held that although the husband had made a provision for his wife’s separate maintenance, he could not be said to have given up all claim to her society and assistance, and that he sustained an injury from the adultery which brought disgrace upon his name, and might introduce a spurious progeny into his family.*

Action for
crim. con.,
notwith-
standing
deed of
separation.

In *Parkinson v. Lee*,† in contradiction to the loose maxim that on the sale of goods a sound price implied a warranty of soundness, Lord Ellenborough, with the rest of the Court, decided that upon a sale of hops, however high the price might be, there was no implied warranty that the commodity should be merchantable, and that in the absence of fraud the governing maxim is *caveat emptor*.

No implied
warranty
from high
price of
goods.

Mr. Justice Johnson, an Irish Judge, having been indicted in the Court of King’s Bench at Westminster for publishing in the county of Middlesex a libel on Earl Talbot, the Lord Lieutenant of Ireland, and having pleaded in abatement that as he had been born and had

Liability
for publica-
tion of a
libel in
England by
order of
persons
living out
of England.

* *Chambers v. Caulfield*, 6 East, 244.

† 2 East, 314.

constantly resided in Ireland, he was only liable to be tried in the courts of that country, Lord Ellenborough, in a very elaborate judgment, overruled the plea, thus concluding :—

“If the circumstances of the defendant’s birth in Ireland and his residence there at the time of the publication here have the effect of rendering him not punishable in any court in this country for such publication, this impunity must follow as a consequence from its being no crime in the defendant to publish a libel in Middlesex. Indeed, the argument rests wholly upon this position, that the defendant owed no obedience to the laws of this part of the United Kingdom, so that he has not been guilty of any crime in breaking them. The learned Judge lays down for law that if he remains at Dublin, he may by means of a hired assassin commit a murder in London without being liable to punishment.”

The indictment being tried at bar, the libellous letters published in ‘Cobbett’s Political Register’ were proved to be in the handwriting of the defendant, with the Dublin post-mark upon them. They were addressed to the editor of the ‘Register’ in Middlesex, and they contained a request that he would print and publish them. The defendant’s counsel insisted that he was entitled to an acquittal on the ground that the evidence was defective.

Lord Ellenborough: “There is no question of the fact of publication by Mr. Cobbett, in Middlesex, of that which is admitted to be a libel; and the only question is, whether the defendant was accessory to that publication? If he were, the offence is established; for one who procures another to publish a libel, is no doubt guilty of the publication, in whatever county it is in fact published, in consequence of his procurement.”

The other Judges concurred, and the defendant was found GUILTY.*

The Government of the United States of America having in the year 1808 laid an embargo in American

* 6 East, 583; 7 East, 65.

ports on all American ships bound for Great Britain, the owners, who were insured in England, gave notice of abandonment to the underwriters, and claimed a total loss. Lord Ellenborough acquired great glory by boldly deciding that, under these circumstances, the English underwriters were not liable. He proceeded on this maxim, that a party insured can never recover for a loss which he himself has occasioned, and he laid down that under every form of government each subject or citizen must be considered as concurring in every act of the supreme power of the country in which he lives:—

English underwriters not liable for embargo put on by the Government of the assured.

“The foundation of the abandonment is an act of the American Government. Every American citizen is a party to that act; it has virtually the consent and concurrence of all, and, amongst the rest, the consent and concurrence of the assured. The assured having prevented the vessels from sailing, can they make the detention of the vessels the foundation of an action?”*

Where a marriage had been regularly celebrated by a priest in orders, in the face of the church, between a man of full age and a woman under age, who was illegitimate, with the consent of her mother, the father being dead, and they had lived together as man and wife for many years, Lord Ellenborough decided (I think erroneously, although he had the concurrence of two able Judges, Le Blanc and Bayley) that the marriage was void and their children were bastards, because the Court of Chancery had not appointed a guardian to the minor, to consent to the marriage. This most revolting decision might have been avoided by holding on the true principles for construing statutes, that although Lord Hardwicke's Act (26 Geo. II. c. 33) says that all marriages not

Validity of marriage of illegitimate minor.

* 10 East, 536. *Conway v. Gray*.

solemnized in the manner therein mentioned shall be void, this nullification applies only to the marriages of persons in the contemplation of the legislature, and that the marriages of illegitimate minors could not have been in the contemplation of the legislature with respect to this consent, as the condition requiring the consent of parents or guardians could not be fulfilled—so that this being *casus omissus*, the marriage in question was valid. But Lord Ellenborough's nature was somewhat stern, and he did not dislike a judgment that others would have found it painful to pronounce—rather rejoicing in an opportunity of showing that he was not diverted by any weak sympathies from the upright discharge of his duty.*

However, he was always eager to extend the protection of British law to all who were supposed to be oppressed. Upon an affidavit that an African female, formed in a remarkable manner, was exhibited in London under the name of the HOTTENTOT VENUS, the deponents swearing that they believed she had been brought into this country and was detained here against her will, he granted a rule to show cause why a writ of *habeas corpus* should not issue to her keepers to produce her in court, and that in the mean time the Master of the Crown Office and persons to be appointed by him should have free access to her :

Case of the
HOTTEN-
TOT VENUS.

At Venus ætherios inter Dps Candida nimbos
Dona ferens aderat.

She appeared before the Master and his associates magnificently attired, offered them presents, and declared that she came to and remained in this country with her free will and consent. A report to this effect

* *Priestly v. Hughes*, 11 East, 1. Mr. and finally the law was rectified by the Justice Grose dissented; the decision Legislature. 4 Geo. IV. c. 76; 6 and 7 was condemned by Westminster Hall, Wm. IV. c. 85,

being made to the Court, Lord Ellenborough said, "We have done our duty in seeing that no human being, of whatever complexion or shape, is restrained of liberty within this realm. Let the rule be discharged."*

One of the most important questions which arose in the Court of King's Bench, while Lord Ellenborough was Chief Justice, was, whether the captain of a man-of-war be liable to an action for damage done by her in running down another vessel, without proof of any personal misconduct or default? An award had been made against him by a legal arbitrator, who set out the facts on the face of his award for the opinion of the Court.

Liability of captain of a ship of war for damage done by her negligent management.

Lord Ellenborough : "Captain Mouncey is said to be liable for the damages awarded in this case, by considering him in the ordinary character of master of the ship by means of which the injury was done. But how was he master? He had no power of appointing the officers or crew on board; he had no power to appoint even himself to the station which he filled on board; he was no volunteer in that particular station, by having entered originally into the naval service; he had no choice whether he would serve or not with the other persons on board, but was obliged to take such as he found there and make the best of them. He was the King's servant stationed on board this ship to do his duty there, together with others stationed there by the same authority to do their several duties. How, then, can he be liable for their misfeasance any more than they for his?" [*Award set aside.*][†]

The only occasion when Lord Ellenborough was ever seriously supposed to be swayed by his own interest, was in deciding whether sailors employed in the lobster-fishery were privileged from being pressed into the Royal Navy. He had an extreme love of turbot, with lobster-sauce, and although sailors employed in

Lord Ellenborough supposed to be influenced by his love of lobster-sauce.

* *Hottentot Venus's Case*, 13 East, 334.

† *Nicholson v. Mouncey*, 15 East, 384.

the deep-sea fishing, where turbot is found, were allowed to be privileged from impressment, the Admiralty had issued orders for impressing all sailors employed in collecting lobsters on the rocks and bringing them to Billingsgate. Writs of *habeas corpus* having been granted for the purpose of discharging several who had been so impressed, the counsel for the Crown argued strenuously that upon the just construction of 2 Geo. III. c. 15, and 50 Geo. III. c. 108, they were not entitled to any exemption, not being engaged in the deep-sea fishing.

Lord Ellenborough: "I think the policy of the legislature seems to have been directed to the better supplying the inhabitants of the metropolis and other parts of the kingdom with fish, and for that purpose to bring sound and well-flavoured fish to our markets at a moderate price. It is contended, however, that the protection extends only to those who are engaged in fishing in deep waters, and that lobsters are found in shallow waters. Stat. 50 Geo. III. c. 108, does in its preamble recite that 'various sorts of fish do in the winter retire into the deep water, and that for the supply of the metropolis a larger class of fishing-boats, which cannot be navigated without additional hands, must be employed;' but it enacts, 'that every person employed in the fisheries of these kingdoms shall be exempted from being impressed.' Then is not the lobster-fishery a fishery, and a most important fishery, of this kingdom, though carried on in shallow water? The framers of the law well knew that the produce of the deep sea, without the produce of the shallow water, would be of comparatively small value, and intended that the turbot, when placed upon our tables, should be flanked by good lobster-sauce. 'Fisheries of these kingdoms,' are words of a large scope, embracing all those fisheries from which fish are supplied in a fresh and wholesome state to the markets of these kingdoms, and all who are engaged in such fisheries are within the equity of the Act. *Let the rule be absolute.*" *

In *Chamberlain v. Williamson*,† the curious question arose whether the personal representative of a young

* See *Payne and Thoroughgood's Case*, 1 M. and S. 223.

† 2 M. and S. 409.

lady who had died, being forsaken by her lover who had promised to marry her, could maintain an action against him for breach of the promise to marry. The plaintiff had recovered a verdict with large damages, but a motion was made in arrest of judgment.

May the executor of a lady maintain an action for breach of promise of marriage?

Lord Ellenborough: "The action is novel in its kind, and not one instance is cited or suggested in the argument of its having been maintained, nor have we been able to discover any by our own researches and inquiries; and yet frequent occasion must have occurred for bringing such an action. However, that would not be a decisive ground of objection if, on reason and principle, it could strictly be maintained. The general rule of law is *actio personalis moritur cum personâ*; under which rule are included all actions for injuries merely personal. Executors and administrators are the representatives of the temporal property, that is, the goods and debts of the deceased, but not of their wrongs, except where those wrongs operate to the temporal injury of their personal estate. If this action be maintainable, then every action founded on an implied promise to a testator, where the damage subsists in the previous personal suffering of the testator, would also be maintainable by the executor or administrator. All actions affecting the life or health of the deceased; all such as arise out of the unskilfulness of medical practitioners; the imprisonment of the party brought on by the negligence of his attorney; all these would be breaches of the implied promise by the persons employed to exhibit a proper portion of skill and attention. Although marriage may be considered as a temporal advantage to the party, as far as respects personal comfort, still it cannot be considered in this case as an increase of the individual transmissible personal estate, but would operate rather as an extinction of it. We are of opinion that this judgment must be arrested."

An action being brought by the Earl of Essex against the Honourable and Reverend Mr. Capel, which charged that the defendant had committed a trespass in breaking and entering his grounds, called Cashiobury Park, and with horses and hounds destroying the grass and herbage, and breaking down his fences, the de-

May a trespass committed in fox-hunting be justified?

defendant justified, that the fox being a noxious animal and liable to do mischief, he, for the purpose of killing and destroying him, and as the most effectual means of doing so, broke and entered the park with hounds and horses, and hunted the fox. Replication, that his object was—not to destroy the fox, but the amusement and diversion afforded by the chase. After two witnesses had been examined, Lord Ellenborough interrupted the further progress of the cause:—

“This is a contending against all nature and conviction. Can it be supposed that these gentlemen hunted for the purpose of killing vermin, and not for their own diversion? Can the jury be desired to say, upon their oaths, that the defendant was actuated by any other motive than a desire to enjoy the pleasures of the chase? The defendant says that he has not committed the trespass for the sake of the diversion of the chase, but as the only effectual way of killing and destroying the fox. Now, can any man of common sense hesitate in saying that the principal motive was not the killing vermin, but the sport? It is a sport the law of the land will not justify, without the consent of the owner of the land, and I cannot make a new law accommodated to the pleasures and amusements of these gentlemen. They may destroy such noxious animals as are injurious to the commonwealth, but the good of the public must be the governing motive.”

Nor was more countenance shown by the Chief Justice to a barbarous sport formerly in great favour with country squires, but which the increased refinement of modern manners has tended to discourage. He refused to try an action for money had and received for a wager on a cock-fight:—

Illegality
of cock-
fighting.

“This must be considered a barbarous diversion, which ought not to be encouraged or sanctioned in a court of justice. I believe that cruelty to these animals in throwing at them forms part of the dehortatory charge of judges to grand juries, and it makes little difference whether they are lacerated by sticks and stones, or by the bills and spurs of each other. There is likewise another principle on which I think an action on such wagers cannot be maintained. They tend to the degradation of courts

of justice. It is impossible to be engaged in ludicrous inquiries of this sort consistently with that dignity which it is essential to the public welfare that a court of justice should always preserve. I will not try the plaintiff's right to recover the four guineas, which might involve questions on the weight of the cocks and the construction of their steel spurs."*

It had long been a disputed question whether the consul of a foreign Prince residing in this country, and acknowledged as such by our Government, be privileged from arrest for debt. A motion was at last made to discharge out of custody the consul of the Duke of Sleswick Holstein Oldenburg, who had been arrested for a debt contracted by him as a merchant in this country :

Consuls not
privileged
as public
ministers.

Lord Ellenborough : "Every person who is conversant with the history of this country is not ignorant of the occasion which led to the passing of the statute 7 Anne, c. 12. An ambassador of the Czar Peter had been arrested, and had put in bail ; and this matter was taken up with considerable inflammation and anger by several of the European Courts, and particularly by that potentate. In order to soothe the feelings of these powers the Act of Parliament was passed, in which it was thought fit to declare the immunities and privileges of ambassadors and public ministers from process, and it was enacted 'that in case any person should presume to sue forth or prosecute any such writ or process, such persons being thereof convicted, should be deemed violators of the law of nations and disturbers of the public repose, and should suffer such penalties and corporal punishment as the Lord Chancellor or the Chief Justice of the Queen's Bench or Common Pleas, or any two of them, should adjudge to be inflicted.' Thus was conferred a great and extraordinary power, which I am glad to think belongs in no other instance to those functionaries. The act goes on to declare that 'all writs and processes that shall in future be sued forth, whereby the person of any ambassador or other public minister of any foreign Prince or state may be arrested or imprisoned, shall be deemed to be utterly null and void.' Here the question is, if this defendant be an ambassador or other public minister of a foreign Prince or State? He certainly is a person invested with some authority by a foreign Prince ; but is he a public minister? There is, I

believe, not a single writer on the law of nations, nor even of those who have written looser tracts on the same subject, who has pronounced that a consul is *eo nomine* a public minister."

Having minutely examined the authorities, and pointed out that there was no usage to show that by the law of nations a consul is entitled to any exemption from being sued in courts of justice as any ordinary person, a rule was pronounced for continuing the defendant in custody.*

Lord Ellenborough, in the great case of *Burdett v. Abbott*,† stoutly maintained the doctrine denied by the plaintiff, that the House of Commons has power to imprison for a contempt. Having examined all the authorities cited, he observed,—

Privilege of
House of
Commons
to imprison
for contempt.

"Thus the matter stands on parliamentary precedent, upon the recognition by statute, upon the continued recognition of all the Judges, and particularly of Lord Holt, who was one of the greatest favourers of the liberties of the people, and as strict an advocate for the authority of the common law against the privileges of Parliament as ever existed. I should have thought that this was a quantity of authority enough to have put this question to rest. Why should the House of Commons not possess this power? What is there against it? A priori, if there were no precedents upon the subject, no legislative recognition, no opinions of Judges in favour of it, it is essentially necessary to the House of Commons, and they must possess it; indeed they would sink into utter insignificance and contempt without it. Could they stand high in the estimation and reverence of the people, if, whenever they were insulted, they were obliged to wait the comparatively slow proceedings of the ordinary courts of law for their redress?—that the Speaker, with his mace, should be under the necessity of going before a Grand Jury to prefer a bill of indictment for an insult offered to the House?"

He then repelled with indignation the quibbling objections made to the form of the warrant, and vindicated

* *Viveash v. Becker*, 3 M. and S. 284.

† 14 East, 1.

the right of the officers to break open the outer door of the plaintiff's house for the purpose of apprehending him.

But I think he did not lay down with sufficient discrimination and accuracy the limits within which parliamentary proceedings may be published without danger of an indictment.

Doubtful doctrine in Rex v. Creevey.

Mr. Creevey, M.P. for Liverpool, in a debate in the House of Commons respecting the collection of the public revenue, had made a speech in which he pointed out some alleged misconduct of an Inspector-General of Taxes. An inaccurate account of this speech having been published, he printed and circulated a full and correct one. For this he was indicted, on the ground that it reflected on the Receiver-General, and therefore was a libel. His counsel contended that he was absolutely entitled to an acquittal on the admission made by the prosecution, that the supposed libel was a true report of a speech made in the House of Commons. This was very properly overruled by Le Blanc, J., the presiding Judge, on the authority of the conviction and punishment of the Earl of Abingdon, who, having quarrelled with his steward, made a scurrilous speech against him in the House of Lords, which he maliciously published with intent to defame him—but the learned Judge erroneously (I think) told the Jury that “if there was anything in Mr. Creevey’s published speech which reflected on the prosecutor, the publication of it was a misdemeanor.” The defendant being found *guilty*, a motion was made for a new trial on the ground of misdirection :

Lord Ellenborough : “The only question is, whether the occasion of the publication rebuts the inference of malice arising from the matter of it? We cannot scan what the defendant said within the walls of the House of Commons; but has he a right to reiterate these reflections to the public?—to address them as an

oratio ad populum, in order to explain his conduct to his constituents? The Jury have found that the publication was libellous, and I can see no ground for drawing the subject again into discussion."

The rule was refused, and the defendant was sentenced to pay a fine of 100*l.*—but if his object *bonâ fide* was to explain his conduct to his constituents, I think he was entitled to a new trial and to an acquittal.

Lord Ellenborough nobly maintained the freedom of literary criticism. Sir John Carr, Knight, a silly author, brought an action against respectable booksellers for a burlesque upon certain foolish Travels which he had given to the world, relying upon a recent decision of Lord Ellenborough in *Tabbatt v. Tipper*.

Lord Ellenborough: "In that case the defendant had falsely accused the plaintiff of publishing what he had never published. Here the supposed libel only attacks those works of which Sir John Carr is the avowed author; and one writer, in exposing the absurdities and errors of another, may make use of ridicule, however poignant. Ridicule is often the fittest instrument which can be employed for such a purpose. If the reputation or pecuniary interests of the party ridiculed suffer, it is *damnum absque injuria*. Perhaps the plaintiff's Tour in Scotland is now unsaleable; but is he to be indemnified by receiving a compensation in damages from the person who may have opened the eyes of the public to the bad taste and inanity of his composition? Who prized the works of Sir Robert Filmer after he had been refuted by Mr. Locke, but shall it be said that he might have maintained an action for defamation against that great philosopher, who was labouring to enlighten and to ameliorate mankind? We really must not cramp observations upon authors and their works. Every man who publishes a book commits himself to the judgment of the public, and any one may comment upon his performance. He may not only be refuted, but turned into ridicule if his blunders are ridiculous. Reflection on personal character is another thing. Show me any attack on the plaintiff's character unconnected with his authorship, and I shall be as ready to protect him; but I cannot hear of malice from merely laughing at his works. The works may be very valuable for anything I know to the contrary, but others have a right to pass judgment upon

them. The critic does a great service to society who exposes vapid as well as mischievous publications. He checks the dissemination of bad taste, and saves his fellow-subjects from wasting their time and their money upon trash. If a loss arises to the author, it is a loss without injury; it is a loss which the party ought to sustain; it is the loss of fame and profit to which he never was entitled. Nothing can be conceived more threatening to the liberty of the press than the species of action before the Court. We ought to resist an attempt against fair and free criticism at the threshold."* [*Verdict for the Defendants.*]

A good specimen of Lord Ellenborough's *nisi prius* manner is his opinion upon the question, whether a man by nailing to his own wall a board which overhangs his neighbour's field is liable to an action of trespass:

Trespass by balloons considered.

"I do not think it is a trespass to interfere with the column of air superincumbent on the close of another. I once had occasion to rule on the circuit that a man who from the outside of a field discharged a gun into it, so that the shot must have struck the soil, was guilty of breaking and entering it. A very learned Judge who went the circuit with me, having at first doubted the decision, afterwards approved of it, and I believe that it met with the general concurrence of those to whom it was mentioned. But I am by no means prepared to say that firing across a field *in vacuo*, no part of the contents touching it, amounts to a *clausum fregit*. Nay, if this board commits a trespass by overhanging the plaintiff's field, the consequence is that an *aéronaut* is liable to an action of trespass at the suit of the occupier of every house and inch of ground over which his balloon passes in the course of his voyage. Whether the action lies or not, cannot depend upon the length of time for which the superincumbent air is evaded. If any damage arises from the overhanging substance, the remedy is by an action on the case."†

Peter Hodgson, an attorney, having sued Mr. Scarlett, the celebrated counsel (afterwards Lord Privilege of counsel to Abinger and Chief Baron of the Exchequer), to criminate for speaking these words, "Mr. Hodgson is an attorney. a fraudulent and wicked attorney," it appeared that

* Carr v. Hood and another, 1 Campb. 355.

† Pickering v. Edd, 4 Campb. 220.

the words were spoken in an address to the Jury in a trial involving the good faith of a transaction which Mr. Hodgson had conducted :

Lord Ellenborough : "The law privileges many communications which otherwise might be considered calumnious, and become the subject of an action. In the case of master and servant the convenience of mankind requires that what is said in fair communication between man and man, upon the subject of character, should be privileged if made *bonâ fide* and without malice. So a counsel intrusted with the interests of others, and speaking from their information, for the sake of public convenience, is privileged in commenting fairly on the circumstances of the case, and in making observations on the parties concerned and their agents in bringing the cause into court. Now the plaintiff in this case was not only the attorney, but was mixed up in the concoction of the antecedent facts, out of which the original cause arose. It was in commenting on this conduct that the words were used by the defendant. Perhaps they were too strong, but the counsel might *bonâ fide* think them justifiable and appropriate. They were relevant and pertinent to the original cause in which they were spoken, and consequently this action is not maintainable."*

Richard Thornton having been tried at Warwick upon an indictment, in the King's name, for the murder of Mary Ashford, and found *Not Guilty* by the jury, William Ashford, her brother and heir-at-law, sued out an appeal of murder against him. The appellee being brought by writ of *habeas corpus* into the Court of King's Bench to plead, he pleaded *vivâ voce* as follows : "Not Guilty, and I am ready to defend the same by my body," and thereupon taking off a gauntlet which he wore from his right hand, he threw it on the floor of the Court. The appellor having obtained time for that purpose, with a view to deprive the appellee of the privilege of trial by battle, put in a counter-plea, setting forth evidence of circumstances tending strongly to prove his guilt. To this the

Award of
trial by
battle on an
appeal of
murder.

* *Hodgson v. Scarlett*, 1 Barn. and Ald. 232.

appellee put in a replication, setting forth facts in his favour, and his former acquittal. The appellor demurred. The question was then very learnedly argued, whether upon this record the appellee was entitled to insist upon trial by battle?—

Lord Ellenborough: “The cases which have been cited in this argument, and the others to which we ourselves have referred, show very distinctly that the general mode of trial by law in a case of appeal is by *battle*, at the election of the appellee, unless the case be brought within certain exceptions—as for instance, where the appellee is an infant, or a woman, or above sixty years of age—or where the appellee is taken with the manour, or has broken prison. In addition to all these,—where, from evidence which may be adduced, there is a violent presumption of guilt against the appellee, which cannot be rebutted. Without going at length into the discussion of the circumstances disclosed by the counter-plea and replication, it is quite sufficient to say that this case is not like those in *Bracton*; it is not one with conclusive evidence of guilt. Contrary evidence must be admitted if there were a trial by jury. The consequence is, that trial by battle having been duly demanded, this is the legal and constitutional mode of trial, and it must be awarded. The law of the land is in favour of the trial by battle, and it is our duty to pronounce the law as it is, and not as we may wish it to be. Whatever prejudices therefore may justly exist against this mode of trial, still as it is the law of the land the Court must pronounce judgment for it.”

The public now expected to see the lists prepared in Tothill Fields, and the *battle* fought out before the Judges, for whom a special tribunal was to have been erected; but the appellor, who was much inferior in strength to the appellee, cried *craven*, and declining to proceed, the appellee was discharged.*

Bidding adieu to pure law, which I am afraid may be thought by many “rough and crabbed,” I must now

* *Ashford v. Thornton*, 1 Barn. and Ald. 405. In consequence of the scandal occasioned by this case, stat. 59 Geo. III. c. 46, was passed, abolishing criminal

appeals, and trial by battle in writs of right which till then might have been demanded.

present Lord Ellenborough to my readers as a Peer of Parliament, and give some account of trials before him of a political and historical aspect. Some expected that he would have great success in the Upper House,—and, as often as he spoke there, he made a considerable sensation by his loud tones and strong expressions; but he was not listened to with much favour, for their Lordships thought that he was not sufficiently refined and polished for their delicate ears, and they complained that he betrayed a most unjudicial violence.

His maiden speech, of these faults, was in the debate on the definitive treaty of peace with France. Having apologized to another Peer, who had risen and begun to speak at the same time with him, and expressed his extreme reluctance to obtrude himself upon their Lordships so very soon after taking his seat among them,—he addressed himself to Lord Grenville's objection, that, contrary to usage and sound diplomacy, this treaty did not renew or recognize former treaties:

“With regard to the noble Lord's argument, that by the omission the public law of Europe has become a dead letter, I am astonished to observe a man of talents fall into such a mistake. To what use would the revival of all the solemn nonsense and important absurdity contained in those treaties have contributed? Are they not replete with articles totally inapplicable to the present situation of Europe, and are they not for this reason become unintelligible trash and absolute waste paper? With respect to the Cape of Good Hope, the cession of which is so much deplored, I say, my Lords, that we are well rid of it. There is no advantage in that post, and the expense of it would have been so great that the country would soon have complained of its retention.”

So he went over all the articles of the treaty, and concluded with expressing his warm thanks to the ministers—

“who had taken the helm of State when others had abandoned

it, and who had restored the blessings of peace to their exhausted country." *

This bullying style of oratory was not favourably received, but, luckily for the orator, on this occasion he could do no harm, Whigs as well as Ministerialists being determined to vote for the treaty,—and the minority of violent anti-Gallicans who censured it amounted only to sixteen.†

Lord Ellenborough was quite insensible of the impression made by his violence, and soon after, there being an attack on ministers, he began his defence of them by saying that “he could not sit silent when he heard the capacity of able men arraigned by those who were themselves most incapable, and when he saw ignorance itself pretending to decide on exuberant knowledge possessed and displayed by others.”‡ The Chief Justice of England being a peer may, with propriety and effect, take part in the debates of the House of Lords on important questions of statesmanship, such as the causes of war and the conditions of peace, but he should comport himself rather as a judge calmly summing up evidence and balancing arguments, than as the retained advocate of the Government or of the Opposition.

Lord Ellenborough, till he himself became a cabinet minister, did not again break out with violence, save in opposing a job so gross that he was rather applauded for boldly pronouncing its true character. The Athol family, for certain rights in the Isle of Man, of which they were deprived, had been superabundantly compensated; but many years after the bargain into which they had voluntarily and gratefully entered, they made a claim for further compensation,—which the Government, at

* 36 Parl. Hist. 718.

† Ib. 738.

‡ Ib. 1572.

His exposure of the Athol job.

a time when prodigality of expenditure ranked among ministerial virtues, was disposed to grant. A bill was introduced into Parliament for the purpose, and this bill, without Lord Ellenborough's determined opposition to it, would have been quietly smuggled through. He began by moving that certain additional papers upon the subject should be printed, and that the second reading of the bill should be postponed till there might be an opportunity of perusing and considering them. This was resisted by the Earl of Westmoreland :

Lord Ellenborough : " My Lords, when I look at the papers just now printed, and still reeking from the press, so that I cannot open them without endangering my health—when I look at a folio volume of 140 uncut pages, presented this day by the noble Earl, I cannot but enter my solemn protest against pretending to debate the merits of this bill under such circumstances—against a proceeding which could only be sanctioned by Parliament in the worst and most corrupt times. I do not ask for a long delay, but I hope that noble Lords will consult their own dignity, and show some deference to public opinion, by granting a short time for gaining necessary information, that we may see whether we are not robbing the Exchequer to put the plunder into the pocket of an accomplice. I pause for a reply. [Having sat down for a few moments he thus resumed.] Then I am to understand, my Lords, that it is your intention to proceed with this bill to-night. With the imperfect lights I have, I shall try to expose to you some of the deformities of the bill. In the first three lines of the preamble, it tells three lies. The Isle of Man was never granted in sovereignty by the King of England, but to be held in petty serjeanty by the presentation of two falcons to the King at his coronation. This must have been known to the author of the bill—yet 'like a tall bully'—I will not finish the line. When the noble Earl talks of Acts of Parliament not binding the Isle of Man, I am astonished at the puerility of the argument; if Acts of Parliament cannot bind the Isle of Man, the Act passed in 1765 for the purchase of the Isle is a nullity. Then we have the assertion that the compensation given to the late Duke of Athol was inadequate. The late Duke named his own sum, and in the course of forty years his family have received 177,000*l.* more than they were entitled to. You propose to open on its hinges a door to fraud, which, like a door described in 'Paradise Lost,' if once opened will

never be shut again. Never did I witness a gross job present itself in Parliament in such a bodily form as this. In a few days Parliament will be dispersed, and let us not return to our respective homes with the stigma of having passed such a bill. Let us not at a moment like this, when all classes are ground down with taxes, add to their burdens by voting a boon to mendicant importunity. If indeed our supplies were unlimited, if we could draw upon them without any fear of exhaustion, if the resources of the State grew like the fabled Promethean liver under the beaks and talons of the vultures by whom they are lacerated and devoured, then indeed we might yield to this demand. The times are critical; our dangers are great—the state of our finances is hopeless; let us not, my Lords, imitate the conduct of reckless sailors in a storm, who, when they see the vessel driving on the rocks, instead of trying to save her, throw up the helm, abandon the sails, and fall to breaking open the lockers. If we would avoid the thunderbolts of divine vengeance which seem ready to burst upon us, let us rather deck ourselves in the robes of virtue, and with the love of God let us try to recover the love of the people, of whom we ought to be the protectors, not the spoliators. Be the event what it may, *liberavi animam meam.*”

Several “silken barons” having complained of this language as too strong and unparliamentary, Lord Ellenborough said, “The attack made upon me would have been just had I said anything wantonly to give pain to any noble Lord; but my observations were applied to the measure, not to any individual whatever; and by no milder words than those I used could the measure be truly characterised.”*

When the war was renewed after the truce following the supposed treaty of peace signed at Amiens, Lord Ellenborough, in supporting the Volunteer Consolidation Bill, very stoutly defended the prerogative of the Crown to call out the whole population for the defence of the realm:

“In an age of adventurous propositions,” said he, “I did not

* 5 Parl. Deb. 773-792. After all, to the great discredit of Mr. Pitt's second administration, the bill passed.

Right of
the Crown
to the
military
services of
all subjects.

expect that any noble Lord would have ventured to question this radical, essential, unquestionable, and hitherto-never-questioned prerogative. My Lords, from the earliest period of our history we have been a military people; and this right, inherent in the Crown from the Norman Conquest, cannot be abandoned without an act of political suicide. I hold in my hand a copy of the Commission of array passed in the fifth year of Henry IV., referred to by Lord Coke in his Fourth Institute, written in the reign of James I., acknowledged by him to be law, and never since repealed or modified. Here, my Lords, we have a solemn recognition of the power of the Sovereign to require in case of insurrection, or the apprehension of invasion, the services of all his subjects capable of bearing arms—in the words of the Commission, *potentes et habiles in corpore*. This power, my Lords, is inherent in the supreme executive government in every state. Vattel and the other writers on the Law of Nations are unanimous in saying that the power exists in all countries, royal or republican, which have anything like civilised rule. As to the noble Lord's supposition that this prerogative enables the King to throw all classes indiscriminately into the ranks, I say such an abuse of it is not necessary, and would not be tolerated; men upon the contemplated emergency are to be employed according to their habits of life, and to the modes in which they would be most useful. But I trust that in case of extreme necessity no individual who bears the semblance of a man, who values his country and his domestic ties, and who knows his duty to fight body to body, *pro aris et focis*, will stickle about the mode in which his energies can be most advantageously brought into action. My Lords, unfitted even as I am by education and habit for a campaign, yet in such a case of extreme necessity I should not think I did my duty to my country or to my children if I did not cast this gown from my back, and employ every faculty of my mind and of my body to grapple with the enemy."

His martial ardour was much applauded, and appeared the more wonderful from his speaking on this and all other occasions in the House of Lords attired in his black silk robes and with a judicial wig.* His hearers likewise recollected the well-known fact that when Attorney-General he had enlisted in a volunteer corps, and had never been promoted to the ranks out of the awkward squad, the drill-sergeant having in vain tried

* Lord Denman was the first chief justice who appeared in the House of Lords *en bourgeois*.

by chalk and other appliances to make him understand the difference between his right foot and his left, or with which of them he was to step forward on hearing the word "MARCH!"

The only other considerable speech which he made before Mr. Pitt's death was against Lord Grenville's motion for a committee on the Catholic Petition, when he so violently opposed any further concession to the Roman Catholics, that the public were much surprised to find him sitting, soon after, in the same Cabinet with Lord Grenville and Charles Fox. We cannot be surprised that this Cabinet was so short-lived, although it contained "all the talents" of the country. Lord Ellenborough very sensibly and forcibly pointed out on this occasion the inconvenience arising from giving power to religionists owning the supremacy of a foreign pontiff; but he caused a smile when, in describing the danger of the Pope again subjecting Great Britain to his sway, he quoted the lines—

His hostility to the Roman Catholics.

"Jam tenet Italiam, tamen ultra pergere tendit
Actum inquit nihil est, nisi Poeno milite portas
Frangimus et mediâ vexillum pono suburrâ."*

Although Lord Ellenborough's success as a debater in the House of Lords was doubtful, he was securing to himself a great reputation as a Criminal Judge. He presided with applause at the trial of Colonel Despard for treason in plotting the insane scheme to establish a republic after massacring the King, the royal family, and the greatest number of the members of both Houses of Parliament. I was present at this trial, and well remember the Chief Justice's very dignified, impressive,

Trial of
Colonel
Despard for
treason.

Feb. 7, 1803.

* This appears much less absurd now, after Pio Nono's creation of the archbishopric of Westminster, and his partition of all England into Roman Catholic sees.—September, 1855.

and awe-inspiring deportment. He caused some dissatisfaction by thus abruptly and sarcastically snubbing the great Nelson, who, when called to give the prisoner a character, was proceeding to describe his gallant conduct in several actions: "I am sorry to be obliged to interrupt your Lordship, but we cannot hear what I dare say your Lordship would give with great effect, the history of this gentleman's military life."

At two in the morning I saw the Chief Justice put on the black cap to pronounce the awful sentence of the law on Colonel Despard and his associates, and I heard him utter these thrilling sentences:—

"After a long and I trust a patient and impartial trial, you have been severally convicted of the high treasons charged upon you by the indictment. In the course of the evidence which has been laid before the Court, a treasonable conspiracy has been disclosed of enormous extent and most alarming magnitude. The object of that conspiracy, in which you have borne your several very active and criminal parts, has been to overthrow and demolish the fundamental laws and established government of your country; to seize upon and destroy the sacred person of our revered and justly-beloved Sovereign; to murder the various members of his royal house; to extinguish the other branches of the legislature of this realm, and, instead of the ancient limited monarchy, its free and wholesome laws, its approved usages, its useful gradations of rank, its natural and inevitable as well as desirable inequalities of property, to substitute a wild scheme of impracticable equality, holding out, for the purpose of carrying this scheme into effect, a vain and delusive promise of provision for the families of the *heroes* (falsely so called) *who should fall in the contest*—a scheme equally destructive of the interests and happiness of those who should mischievously struggle for its adoption as of those who should be the victims of its intended execution. This plan has been sought to be carried into effect in the first place by the detestable seduction of unwary soldiers from their sworn duty and allegiance to his Majesty, and by the wicked insnaring of their consciences by the supposed obligation of an impious and unauthorized oath, and next by the industrious association to this purpose of the most needy or the most unprincipled persons in the lowest ranks of society. It is, however, wisely ordained by Divine Providence, for the security and

happiness of mankind, that the rashness of such counsels does for the most part counteract and defeat the effects of their malignity, and that the wickedness of the contrivers falls ultimately upon their own heads, affording at the same time the means of escape and security to the intended victims of their abominable contrivances. The leagues of such associates are at all times false and hollow. They begin in treachery to their king and country, and they end in schemes of treachery towards each other. In the present instance your crimes have been disclosed and frustrated through the operation of the same passions, motives, and instruments by which they were conceived, prepared, forwarded, and nearly matured for their ultimate and most destructive accomplishment. Upon the convicted contrivers and instruments of this dangerous but abortive treason it remains for me to perform the last painful part of my official duty. As to you, Colonel Edward Marcus Despard, born as you were to better hopes, intended and formed as it should seem by Providence for better ends; accustomed as you have hitherto been to better habits of life and manners, pursuing as you once did, together with the honourable companions of your former life and services (who have appeared as witnesses to your character during that period), the virtuous objects of loyal and laudable ambition; I will not at this moment point out to you how much all these considerations and the degraded and ignominious fellowship in which you now stand enhance the particular guilt of your crime, sharpening and embittering, as I know they must, in the same proportion the acuteness and pungency of your present sufferings. I entreat you, however, by the memory of what you once were, to excite and revive in your mind an ardent and unceasing endeavour and purpose during the short period of your remaining life to subdue that callous insensibility of heart of which, in an ill-fated hour, you have boasted, and to regain that salutary and more softened disposition of the heart and affections which I trust you once had, and which may enable you to work out that salvation which, from the infinite mercy of God, may even yet be attainable by effectual penitence and prevailing prayers. As to you, John Wood (naming eight others), the sad victims of his seduction and example, or of your own wicked, discontented, and disloyal purposes, you afford a melancholy but I hope an instructive example to all persons in the same class and condition with yourselves—an example to deter them by the calamitous consequences which presently await your crimes from engaging in the same mischievous and destructive counsels and designs which have brought you to this untimely and ignominious end. May they learn properly to value the humble but secure blessings of an industrious and

quiet life, and of an honest and loyal course of conduct—all which blessings you have in an evil hour wilfully cast from you. The same recommendation which I have already offered to the leader in your crimes and the companion in your present sufferings as to the employment of the short remainder of your present existence I again repeat, and earnestly recommend to every one of you; and may your sincere and deep penitence obtain for you all hereafter that mercy which a due and necessary regard to the interest and security of your fellow-creatures will not allow of your receiving here. It only remains for me to pronounce the sentence of the law upon the crime of which you are convicted. That sentence is, and this Court doth adjudge that, &c."

Then came the dreadful enumeration of the barbarities which the law at that time adjudged to be inflicted on traitors—now commuted for hanging and beheading.*

Colonel Despard and six of his associates actually were executed;—and the revolting parts of the sentence being remitted, the public did not complain of undue severity. The temptation to engage in such conspiracies, which promise suddenly to elevate those who engage in them to power, wealth and fame, cannot be counteracted by the dread, on failure of a term of imprisonment, or even of transportation with the hope of a speedy recall. An attempt for selfish purposes to overturn the monarchy and to inundate the country with blood cannot be leniently treated as a mere "political offence."

Lord Ellenborough was soon after placed in a most difficult situation on a trial for libel, the prosecutor being no other than Napoleon Buonaparte. This autocrat having extinguished liberty in France and conquered the continent of Europe, was resolved to put down free discussion in England, as a preliminary to the extension of his empire over the British Isles. He was galled by

Trial of
Peltier for
a libel on
Napoleon
Buonaparte.

* 23 St. Tr. 315-528.

the severe strictures on his conduct which appeared in the London journals, and he remonstrated upon the subject to our ministers, but received for answer that the law, which in England is supreme, gave them no power to interfere. At last there came out in the *AMBIGU*, a periodical in the French language, published in London by M. Peltier, a French emigrant, a poem, and other articles, which in one sense might be construed into an exhortation to assassinate the First Consul. A new representation was made by the French ambassador, and the Attorney-General was directed to file a criminal information against the Editor. The most objectionable passage contained the following allusion to the fabled death and apotheosis of Romulus:—

"Il est proclamé Chef et Consul pour la vie
Pour moi, loin qu'à son sort je porte quelque envie,
Qu'il nomme, j'y consens, son digne successeur;
Sur le pavois porté qu' on l'élise *EMPEREUR*;
Enfin, et Romulus nous rappelle la chose,
Je fais vœu . . . dès demain qu'il ait l'*apothéose*."

At the trial before Lord Ellenborough and a special jury, Mr. Perceval, then Attorney-General, Feb. 21, 1803 soon after prime minister, evidently ashamed of the task imposed upon him, tried to make out that the defendant really wished to instigate assassination; and Mackintosh, in one of the finest essays ever composed, argued that the publications complained of were mere pieces of jocularly, and that it was the duty of the jury to resist this effort to enslave the press in the only country in which it could proclaim truth to the world.

Lord Ellenborough: "Gentlemen, it is my duty to state to you that every publication which has a tendency to promote public mischief, whether by causing irritation in the minds of the subjects of this realm that may induce them to commit a breach of the public peace or may be injurious to the morals and

religion of the country is to be considered a libel. So if it defames the characters of magistrates and others in high and eminent situations of power and dignity in other countries, expressed in such terms or in such a manner as to interrupt the friendly relations subsisting with foreign states in amity with us, every such publication is what the law calls a libel. Cases of this sort have occurred within all our memories. Lord George Gordon published a libel on the person and character of the Queen of France, and another person grossly vituperated Paul, the late Emperor of all the Russias. In both these cases there were prosecutions, convictions, and judgments, and I am not aware that the law on which these proceedings were founded was ever questioned. If the publication contains a plain and manifest incitement to assassinate magistrates, as the tendency of such a publication is to interrupt the harmony subsisting between the two nations, the libel assumes a more criminal complexion. What interpretation do you put on these words?—‘As for me, far from envying his lot, let him name, I consent to it, his worthy successor; carried on the shield, let him be elected Emperor. Finally (Romulus recalls the thing to mind) I wish that on the morrow he may have his apotheosis.’ This is a direct wish by the author, that if Buonaparte should be elected Emperor of that country, of which he then held the government, his death might be instantaneous—or that his destruction might follow on the next day. Everybody knows the supposed story of Romulus. He disappeared; and his death was supposed to be the effect of assassination. If the words were equivocal and could bear two constructions, I should advise you to adopt the mildest; but if these words can bear this sense and this only, we cannot trifle with our duty; we cannot invent or feign a signification or import which the fair sense of the words does not suggest.”

He then proceeded to comment on other passages, and according to the fashion which still prevailed under a supposed injunction of Mr. Fox’s Libel Bill not to be found there, he declared that in his opinion the publication was libellous. Thus he concluded :—

“Gentlemen, I trust that your verdict will strengthen the relations by which the interests of this country are connected with those of France, and that it will illustrate and justify in every part of the world the unsullied purity of British Courts of Justice, and of the impartiality by which their decisions are uniformly governed.”

In spite of a verdict of *Guilty*, which the jury under this direction immediately returned, hostilities were very soon renewed with France. Owing to this rupture the defendant was not called up to receive judgment—a very undignified course on the part of the Government; for the prosecution, if justifiable, must be considered as having been commenced to vindicate the majesty of English law—not to humour the First Consul of the French republic.*

While Mr. Addington remained prime minister, Lord Ellenborough warmly supported him as a partisan; but when Mr. Pitt resumed the helm, the Chief Justice confined himself almost entirely to the discharge of his official duties, and seemed to have renounced politics for ever.

* 28 St. Tr. 529-620.

CHAPTER L.

CONTINUATION OF THE LIFE OF LORD ELLENBOROUGH TILL
THE TRIAL OF LORD COCHRANE.

ON the death of Mr. Pitt, after the signal failure of his last confederacy for the humiliation of France, a new ministry was to be formed, and so deplorable was the state of public affairs, that the King's antipathy to Mr. Fox could no longer exclude him from office. Lord Ellenborough little thought that he himself could in any way be comprehended in the new arrangement. However, instead of forming a Cabinet of Lord Howick, Lord Grenville, and those in whose principles Mr. Fox agreed and with whom he had been lately acting in opposition, it was arranged that there should be a *broad bottom* administration, and that, to please the King, Mr. Addington, now become Lord Sidmouth, should be asked to join it. He refused to go in alone, thinking that in that case he might be a cipher, and it was conceded to him that he should bring in a friend with him. He named Lord Ellenborough, to whom personally no objection could be made. The Great Seal was offered to the Chief Justice, and pressed upon him; but he positively refused it, partly from a misgiving as to his competency to preside in Equity, and still more from a foreboding that the new ministry, although it was to include "all the talents" of the country, might be short lived. One great object which the Whigs had in view was to make Erskine Chief Justice of the King's Bench, an office for which he was allowed to be

eminently competent; whereas his qualifications for the woolsack were deemed very doubtful. Lord Ellenborough advised that an attempt should be made to induce Sir James Mansfield, the Chief Justice of the Common Pleas, to take the Great Seal, that Erskine might succeed him; but the offer being made, he at once said "No!"—manfully giving as his reason to the King and to his friends who pressed him to accept, that all his children were illegitimate, although he had married their mother after their birth, and he would not have their illegitimacy constantly proclaimed by accepting a peerage. Lord Ellenborough said, "Nothing now remains but for Erskine to become Chancellor himself"—and he swore a great oath that he would make a very *fair one*. With this assurance Fox and Grenville assented to the appointment, and Erskine, considering Equity mere play compared to the common law, very readily acceded to it.

Lord Ellenborough announced his own determination in the following letter to his brother, the Bishop of Elphin:—

"MY DEAR BROTHER,

"I have not yet the means of communicating any certain intelligence on the subject of Irish arrangements, or should have written to you many days ago. I presume that Lord Redesdale will not retain the Great Seal of Ireland. Public report gives it to Mr. Ponsonby.

"That of Great Britain was offered me last week by Lord Grenville and Mr. Fox, but which for several reasons, both of duty, propriety, and prudence I declined. I have had the honour of being placed in the Cabinet without any wish on my part, and indeed against my wishes—but a sense both of public and private duty has obliged me to accept a situation for the present which I could not have refused without materially disturbing an arrangement which is, I think, necessary for the public interests at the present moment. I assure you that I have no motive of ambition or interest inducing me to mix in politics, and will not suffer myself to bear any part in them which can trench upon the immediate duties of my judicial situation. I am aware that

•

I shall incur much obloquy in the hopes of doing some good, and remain,

“My dear Brother,

“Ever most sincerely and affectionately yours,

“ELLENBOROUGH.

“Bloomsbury Square, Thursday,
February 13, 1806.”*

It seems strange to us that the incongruity of the positions of Cabinet Minister and Chief Justice should not have struck “All the Talents,” but in the hurry of the moment no attention was paid to it by any member of the new Government. The members of the new Opposition had more leisure and were more acute. As soon as the list of the Cabinet was published, violent paragraphs appeared in the newspapers against the unconstitutional conduct of the Whigs, and notices of motion upon the subject were given in both Houses of Parliament.

Lord Ellenborough was taken by surprise when this storm arose, and he was much annoyed by it. Although his seat in the Cabinet was not to be accompanied with any profit, the new dignity had considerably tickled his vanity, and he was really in hopes that he might be of service to the country—particularly in watching over the Church establishment, and checking any concession to the Roman Catholics. He was fully convinced that the objection now started was unfounded, but he made up his mind that he would not condescend to discuss the question in parliament, and thus he addressed the Bishop of Elphin:—

“Bloomsbury Square, March 1, 1806.

“MY DEAR BROTHER,

“My entire occupations for some time past at Westminster and Guildhall have excluded me from the means of learning any news worth sending you.

“A question comes on on Monday in both Houses, which is

* Earl of Ellenborough's MSS.

brought forward under so much misconception of its true merits, and so much party heat and violence, that I shall not wonder if it is carried. The object of those by whom it is brought forward is to obtain a vote of censure upon my appointment to a situation in the Cabinet, on the ground of a supposed incompatibility in that situation in his Majesty's councils with my judicial situation and duties. I think it the more dignified and becoming course not to attend the House upon the occasion. If any vote of the kind intended should be carried, it is my determination to resign my situation as a Privy Councillor; with the duties of which I shall consider the vote (if it has any meaning at all) as pronouncing my judicial function as incompatible. The vote, if it comes at all, must be under an entire ignorance or misunderstanding of the history of the country and the precedents respecting the situation I fill, its proper and usual duties, and the political duties, which the Legislature and the Sovereign have from time to time in the most anxious and important periods connected therewith. You will find this displayed in the debate by Lord Grenville and Mr. Fox, who are fully masters of the subject. I have thought it proper to give you this hint that you may be prepared to expect and to understand the conduct I am determined to adopt.

"Yours, my dear Brother, ever most affectionately,

"ELLENBOROUGH."

When the motions came on, it appeared that there was no ground for apprehension as to the immediate result, for in the House of Commons the proposed censure was negatived by a large majority,* and in the House of Lords it was negatived without a division.† Next morning Lord Ellenborough, before going into court, despatched the following letter to his brother:—

"8 o'clock, Friday morning, March 5, 1806,

"Bloomsbury Square.

"MY DEAR BROTHER,

"The result of the motion of last night on my subject in the Lords was that it was negatived without a division. I thought it most becoming my situation and character not to be present.

"In the Commons it was negatived by a majority of 222 to 64, at ½ past one this morning. I have not yet heard any further

* 4 Parl. Deb. 284.

† Ib. 541.

particulars. I should be glad to see the debate. I am sure that Lord Grenville and Mr. Fox were perfectly masters of this question in all its bearings, and have no doubt they would discuss it most ably. I am hastening to discharge my daily duties in Court, and can add no more than that I am,

“My dear Brother,

“Ever most affectionately yours,

“ELLENBOROUGH.”

On his arrival at Guildhall he received the following letter from Lord Chancellor Erskine:—

“MY DEAR LORD,

“You have been amply rewarded for the firmness with which you resisted the private applications on the subject of your seat in the Cabinet by what passed last night. In our House everything was to your honour; and indeed, though there was a great deal of excellent speaking, there was no debate; at least nothing which could be called so, because, after their batteries were completely silenced, they were under the fire of Lord Holland and Lord Grenville for near two hours, so that, before I put the question, I had only to say that the objection was dead and buried; and, as Lord Eldon had in his speech said that he still hoped your Lordship would withdraw from the Cabinet, I begged to hope in my turn that Lord Bristol, after what he had heard, and which it was impossible he could have been acquainted with, would withdraw his motion. Lord Bristol made no answer. Nothing more was said, and on the question being put, there was nothing that had even the aspect of a division. I hardly heard a voice. David says that in the Commons Fox and Sheridan were most admirable,—and the nakedness of the land appeared in their division of 64. I was quite delighted with the result, because I am sure the whole has originated in spleen, and the people have been made a mere stalking-horse for those who have for ever been their oppressors.


“Your Lordship’s most faithful and sincere

“ERSKINE.

“Tuesday morning.”

But it appears to me that the argument was all on the losing side. That the letter of the law does not recognize the Cabinet as distinguished from the Privy Council is true; but in the practical working of the constitution the Cabinet has been long known as a

separate defined body in whom, under the Sovereign, the executive government of the country is vested, and the names of the members of it have been as notorious as the names of the Lord Chancellor, or the First Lord of the Treasury, or the Secretaries of State, for the time being. Without this body, the monarchy could not now subsist, and any writer describing our polity would point it out as one of the most important institutions in the State. To say therefore that whoever may without impropriety be sworn of the Privy Council, may without impropriety be introduced into the Cabinet, is a mere quibble wholly unworthy of Mr. Fox and Lord Grenville. Their concession that the Chief Justice should absent himself from the Cabinet when the expediency of commencing prosecutions for treason or sedition was to be discussed, is decisive against them, and they did not attempt to answer the observation that the circumstance of the Chief Justice being a member of the Cabinet, however pure his conduct might be, was sure to bring suspicion upon the administration of justice before him in all cases connected with politics. The mischief is not confined to the period when he actually continues a Cabinet minister; for when his party is driven from power, although all his colleagues are deprived of their offices, he still presides in the Court of King's Bench, and there is much danger that in Government prosecutions he will be charged with being actuated by spite to his political opponents. As to the fact of the Chief Justice having been a member of a council of regency, the precedents might as well have been cited of Chief Justices in the King's absence governing the realm, and deciding causes in the AULA REGIS. The only real precedent was that of Lord Mansfield from 1757 to 1765, and that was strongly condemned at the time by Lord Shelburne and other great statesmen. The resolution to keep Lord Chief



Justice Ellenborough in the Cabinet gave a dangerous shake to the new Government; and public opinion being so strong against it, the advantage expected from it was not enjoyed, for, from a dread of injuring his judicial reputation, he took little part in debate, and remained silent on occasions when, professing to be an independent peer, he might legitimately have rendered powerful help to the Government. It is said that Lord Ellenborough himself ere long changed his opinion, and to his intimate friends expressed deep regret that he had ever been prevailed upon to enter the Cabinet.*

* The following letters, which passed at the time between Lord Ellenborough and Mr. Perceval, then beginning to take the lead of the Tory party, have been communicated to me. Considering the eminence of the writers and the permanent interest of the subject, I think it right that they should be preserved.

MR. PERCEVAL TO LORD ELLENBOROUGH.

"MY DEAR LORD,

"I believe Mr. Spencer Stanhope will certainly give notice to-morrow in the House of Commons of his intention to submit some motion to the House on the subject of your Lordship's situation in the Cabinet. Feeling as I do upon the subject, and convinced as I am after a great deal of reflection upon it, that the propriety of the appointment cannot be maintained in argument, I should think that I acted unkindly, if not treacherously, by you (especially as with these feelings I shall be obliged to take a part myself in the debate upon this motion), if I did not once more, with great earnestness, recommend to you the expediency of reconsidering the subject, and of retiring willingly in deference to the public sentiment from the situation in question. I advise it the more readily, because I am sure you do not covet the situation yourself, and that you are risking your own character, which is too important a public possession to be risked lightly, out of deference to the opinions and feelings and wishes

of others, rather than your own. And however unpleasant it may be either to you or your friends to take a step which apparently acknowledges that you have fallen into an error; yet, as you may depend upon it, it will come to this at last, or else raise a ferment of which at present you have no conception, and in which your new friends will leave you to yourself; it must be clearly less unpleasant to you, when the implied acknowledgment will amount to no more than that you have committed an error, into which under the circumstances any person might very naturally have fallen, than to wait till the time when this implied acknowledgment will not only be that you have committed an error, but that you have tried to persevere in it after it was pointed out to you, and against, if not the force of argument, at least the weight of public opinion. Your friends who advise you against the step which I now recommend, cannot, I am certain, see this subject in all its bearings or they could not, as your friends, so advise you. You and they both, living perhaps encircled a good deal by your own friends (who borrow their impressions upon such subjects in great measure from yourselves, and do little more than reflect back upon you your own opinions), do not come in contact with the opinion of the public. It requires some effort, as I feel at this moment, to communicate an unwelcome truth, and therefore few people will

While the "Talents" remained in office the only Government measure on which the Lord Chief Justice

have the hardihood to tell you how apparently unanimous the public opinion is against the Government on this point. The confidence and kindness with which you have uniformly favoured me have drawn from me this frank exposure of my sentiments. I trust you are not offended at it. As far as party feeling against the Government could go, I assure you I should covet the discussion. And I cannot trace in my own mind any improper bias which actuates me, unless indeed the disinclination which I feel to be forced into a situation where my duty will oblige me to take a part in a debate, possibly unpleasant to your feelings, may be deemed an improper bias.

"I am, my dear Lord,

"Yours most truly and faithfully,

"SP. PERCEVAL.

"Lincoln's Inn Fields, Feb. 23, 1806."

LORD ELLENBOROUGH TO MR. PERCEVAL.

"MY DEAR SIR,

"I should not truly state my own feelings upon the occasion, if I did not say that I received on many accounts very great pain from the perusal of your letter.

"You will no doubt conscientiously pursue your own line of conduct. I have only to request that you will have the charity to suppose that I am equally guided by principles of duty, when I declare my intention of abiding and conforming to the sense which Parliament may think fit to express on my subject. I would, as you advise me to do, retire in deference to the public sentiment, if I was perfectly satisfied that the sentiment of the unprejudiced part of the public did not accord with my own—but I am yet to learn that the judgment of those who consider the question without party bias is against me, and am wholly at a loss to discover what duties, in respect of advice to the Crown, are cast upon me in the character of what is called a Cabinet Councillor which do not already

attach upon me as a Member of the Privy Council, under the oath I have taken in case his Majesty should think fit to require my advice as a Privy Councillor (as he has often done that of others) upon subjects relative to the executive Government of the country. However, as you tell me you are 'convinced that the propriety of the appointment cannot be maintained in argument,' I will forbear to waste your time or my own in unavailing discussions, and remain, with thanks for the frankness and explicitness of your communication, and a strong sense of former kindness, very sincerely yours,

"ELLENBOROUGH."

MR. PERCEVAL TO LORD ELLENBOROUGH.

"Lincoln's Inn Fields,

"Monday evening, Feb. 24.

"MY DEAR LORD,

"I cannot possibly permit the letter which I received from you this morning to be the last which should pass between us upon the subject to which it relates. I cannot fail to perceive that you are much offended by my former letter; and I must endeavour to remove, as far as I can, the grounds for that offence, which any objectionable expressions in it may have afforded. If there is any one word in it which intimates or insinuates the slightest or most distant suspicion that you will not act, or have not acted, upon this occasion, as upon all others, upon what you conceive to be the true principles of duty, or which conveys the least ground for your thinking it necessary to request that I would have the charity to suppose that you would act upon such principles, I can only say that I have been most unfortunate in the language which I have used, and have conveyed a sentiment directly the reverse of what I felt, as well as of what I intended to convey. From some expressions of my letter, which you repeat, underlined, I fear that

spoke in the House of Lords was the Bill for abolishing the Slave Trade; and of his speech on this occasion,

in expressing strongly what I strongly felt, I have used language which you have thought disrespectful; if I have done so, I am extremely sorry for it, and ask your pardon most readily for the *manner* in which I have executed my purpose. But for the *matter* of it, I am so conscious that I never acted by you or anybody under a more sincere impression of personal regard than in writing that letter, that though I must be sorry for my failure, I should even now reproach myself if I had not sent it.

"When I referred to the sentiments of the public being against the Government upon this question, I ought certainly to have been aware that nothing is more difficult than to collect with any accuracy the public opinion. But I did so refer to them because I had conversed with, and collected the sentiments of, many persons wholly unconnected with party, of different descriptions, some of them members of our own profession (whose judgments form no unimportant criterion), and also of several persons *friendly to the present Government*, and I have not met with a single one who has doubted of the impropriety of the appointment. You say 'that you are yet to learn that the judgment of persons who consider the question without party bias is against you.' I fully believe that you are so, and it was my belief of this which is my only justification for troubling you with my letter. Your situation is so elevated that you have no chance of obtaining information upon such a subject, unless some real friend will, as I have done, risk, with the hope of serving you, the chance of offending. I have exposed myself to that chance and I fear have been unfortunate. Even now I doubt whether you distinguish between the *illegality*, which you certainly may strongly contest, and the *impropriety* of this appointment, its inexpediency, its tendency to diminish (not the true upright and independent

administration of justice, for in your instance I am sure that will never be), but the satisfactory administration of it in the opinion, or, if you please, the prejudices of the people. It was this *impropriety* that I stated (in terms which I wish I had not used because they offended you) could not be maintained in argument. I will however trouble you no further, and should be ashamed of having troubled you so long, but for the concluding sentence of your note, in which, in expressing a strong sense of my *former* kindness, you too plainly imply that in this instance you suppose me to have departed from it. And I thought it but due to that kindness and friendship which I wished still to retain, or recover, not to spare myself any trouble in, endeavouring to remove as far as I can the unfavourable impression you have received. I hardly know how to hope that, under the immediate effect of present impressions, your opinion of my former letter can be changed. I hope however you will do me the favour to keep what I have written, and if when temporary feelings may have passed by, you will fairly ask yourself what possible motive I could have had to have written an unpleasant letter to you on this or on any other subject, except that which I profess, I think you will be convinced that you can find no trace of any intentional departure from the most friendly kindness and good will in anything I have done.

"I am, my dear Lord,

"Very sincerely yours,

"Sr. PERCEVAL.

"Tuesday morning."

LORD ELLENBOROUGH TO MR. PERCEVAL.

"MY DEAR SIR,

"I received your letter this morning as I was setting out for Guildhall, or would have immediately thanked you for the kind terms in which it is written and the friendly spirit it breathes.

which seems to have been elaborate and eloquent, the following is the only record extant :—

“ Lord Ellenborough supported the bill in a variety of arguments, and, adverting to the speech of a noble and learned Lord (Eldon), expressed his astonishment that any noble Lord who had supported and approved of the same measure, in the shape of an order of council, should oppose this bill, unless it was that they proceeded from different men. The ex-Chancellor and the Chief Justice thereupon got into a sharp altercation, which was put an end to by Lord Lauderdale requiring the clerk at the table to read the Standing Order against *taxing speeches*.” *

Lord Ellenborough regularly attended the trial of Lord Melville, and as to the 2nd, 3rd, 5th, 6th, 7th, and 8th Articles, laying his hand on his ^{Impeachment of Lord Melville.} breast, said with great emphasis and solemnity, “ GUILTY, UPON MY HONOUR.” The acquittal of the noble Viscount upon the 2nd Article, charging him with having connived at the improper drawing of money, by Mr. Trotter, without alleging that he himself derived any profit from the money so drawn, showed that impeachment can no longer be relied upon for the conviction of state offences, and can only be considered a test of party strength. Almost all good Tories said NOT GUILTY, and the independent course taken by Lord Ellenborough very much raised him in public estimation.†

Nothing will give me I assure you more pain than that events should occasion an interruption of that confidence and regard between us from which I had long derived so much satisfaction, and which I had once hoped would endure as long as we both live. I cannot but acknowledge that the admonitions to retire and some other expressions in your letter appeared to me of an harsher tone and temper than you would, I thought, on consideration have been pleased with yourself or have adopted

in any communication with me, but they excited more of sorrow than anger in my mind. Upon the principal question between us I forbear to say one word—in the position in which it at present stands it cannot be further touched by either of us with any degree of delicacy.

“ I remain, with a sincere regard for your character and conduct which I feel neither time nor events ever can efface,

“ Most faithfully yours,

“ ELLENBOROUGH.”

* Parl. Deb. vol. vii., p. 234.

† 29 St. Tr. 549-1482.

The following letter shows that he acted cordially with Mr. Fox, and was confidentially consulted by that great statesman in the attempt then made to bring about a pacification with Napoleon contrary to the wishes of the King:—

"Secret and Confidential.

"Many thanks to you, my dear Lord, for your note. The argument is quite satisfactory, and I should hope Holland would not be a point on which there would be much difficulty. I have heard something to-day which makes me apprehend that internal difficulties, and those from the highest quarter, will be the greatest. I hope nothing will prevent your attending, Monday, at eleven, for a consultation of greater importance in all its consequences never did nor never can occur. Shall we shut the door for ever to peace with France? Shall we admit that a council and ministers are nothing? that the opinion of the K. is everything, from what suggestions soever he may have formed that opinion? These are questions of some moment. Let us act honourably and fairly (in as conciliating a *manner* as possible, I agree). We may be foiled, the country may be ruined, but we cannot be dishonoured. I am, with great regard, my dear Lord,

"Yours ever,

"C. J. Fox.

"St. Anne's Hill, Saturday evening."

On the death of Mr. Fox Lord Ellenborough continued a Cabinet Minister, under Lord Grenville, till the entire dissolution of the government of "All the Talents." Notwithstanding his objection to Roman Catholics sitting in Parliament, he had given his consent in the Cabinet to the little bill (which produced such great effects) for permitting Roman Catholics to hold the rank of field officers in the army; but when the rupture actually took place his sympathies were with the King, and he declared it to be not unreasonable or unconstitutional that the King's ministers should be required to pledge themselves to propose no farther concessions to the

Dismissal of
"All the
Talents."
March,
1807.

Roman Catholics.* However, the Chief Justice parted on good terms with Lord Grenville, who gave him the following testimony to his honourable conduct while they had acted together in the Cabinet :—

“Downing Street, March 13, 1807.

“MY DEAR LORD,

“The matter which has of late occupied our attention is now brought to a state which appears to leave no possibility of the further continuance of the Government. Although I have the misfortune of differing from your Lordship on the expediency of the measures which have been in question, yet the frank and honourable conduct which has at all times marked every part of the share which you have taken in the deliberations and measures of the Government while it subsisted, makes me extremely anxious to have, if possible, the satisfaction of conversing with you to-morrow morning, previous to my going to the Queen’s house, in order that I may have the opportunity of stating to you the course which we have taken during the last two days, and the grounds on which we have acted.

“Whatever be the course of the events to which these transactions may lead, I shall ever retain a strong sense of the conduct which you have held on all occasions during the time that we have acted together, and a sincere respect for your character.

“I have the honour to be, my dear Lord,

“Most truly and faithfully,

“Your most obedient humble servant,

“GRENVILLE.”

* Lord Ellenborough had once looked favourably on the claims of the Irish Roman Catholics, but had become much afraid of them by the representations of his brother, the Bishop of Elphin, who had been exposed to serious perils in the Irish Rebellion of 1798, in which he displayed great gallantry. When Lord Cornwallis during the insurrection was riding with his staff at the head of a column in march, the first object he saw through the haze one morning was the Bishop on horseback coming to join him with a sword by his side, and pistols in his holsters. This same Bishop carried off in his carriage from his own door a country neighbour, who he heard was to

join the rebels the next day,—and drove him 20 miles into Dublin. He had induced him to enter by courteously offering him a lift, but the moment the door of the carriage was closed upon his friend, he collared him and told him he was his prisoner, and the coachman, having his orders, whipped his horses into a gallop. The Bishop had all the qualities of a Christian pastor, but it was thought that, if in the law, he would have made a still better Chief Justice than his brother Edward, although it is rather doubtful whether Edward in the church would have displayed the mild virtues expected in a Bishop.

Henceforth, Lord Ellenborough, estranging himself entirely from the Whigs, entered into a still closer alliance with Lord Sidmouth, and, till his friend and patron again returned to office under Lord Liverpool, joined the small Addingtonian opposition in the House of Lords.

Accordingly, on the motion for the restoration of the Danish Fleet, he declared "that in his opinion there was no act that had ever been committed by the Government of this country which so much disgraced its character and stained its honour as the expedition to Copenhagen; as an Englishman he felt dishonoured whenever the national honour was tarnished; the expedition reminded him of

Feb. 18.
Lord Ellen-
borough's
speech on
the restora-
tion of the
Danish
fleet.

' — the ill-omen'd bark
Built in th' eclipse, and rigg'd with curses dark.'

He thought the object it had in view was most unjustifiable, and that even the success of that object would bring great calamity upon the country. When necessity was pleaded, noble Lords should recollect that this plea rested on an overwhelming inevitable urgency to do a particular act—not *on mere predominating convenience*. Many persons considered it justification enough that it might be very convenient for the country in this instance to apply to its own use what belonged in full property to another. This doctrine he was so much in the habit of reprobating at the *Old Bailey* that he could not help expressing himself with some warmth when he found it set up and acted upon by their Lordships."*

Having defended the Bill by which the Attorney-General was empowered to hold to bail in cases prosecuted by him, and Earl Stanhope having said that such language might have

His alterca-
tion with
Lord Stan-
hope.

* 10 Parl. Deb. 655.

been expected from Jeffreys or Scroggs, Lord Ellenborough thus retorted :

"My Lords, from my station as Chief Justice of England I am entitled to some degree of respect; but I have been grossly calumniated by a member of this House, who has compared me to monsters who in former reigns disgraced the seat of justice—such as Scroggs and Jeffreys. I shall treat the calumny and the calumniator with contempt."

Earl Stanhope: "I meant no such comparison, and if the noble and learned Lord from intimate acquaintance has found a resemblance, this must be one of his singularities; but his rash precipitancy in misapplying what fell from me, convinces me that it might be dangerous to delegate the power created by the Bill even to the noble and learned Lord." *

The Bill passed, but being most unnecessary and most odious, it was not acted upon by any Attorney-General, not even by Sir Vicary Gibbs, its author, who, by his oppressive multiplication of *ex-officio* informations, brought himself and his office into sad disrepute.

One of these informations which excited much interest was filed against Mr. Perry, the proprietor of the *Morning Chronicle*. He was a gentleman of considerable talents and high honour, who did much to raise to respectability and distinction the profession of a journalist in this country. He abstained from all attacks on private character; he was never influenced by any mercenary motive; and his paper, although strongly opposed to the Tory Government, steadily adhered to true constitutional principles. An article in the *Morning Chronicle*, after calmly discussing the Catholic question, thus concluded: "What a crowd of blessings rush upon one's mind that might be bestowed upon the country in the event of a total change of system! Of all monarchs indeed since the Revolution, the successor of George III. will have the finest opportunity of becoming nobly popular."

Feb. 1810.

* 11 Parl. Deb. 710.

Sir Vicary's information alleged that the defendant "being a malicious, seditious, and evil-disposed person, and being greatly disaffected to our Sovereign Lord the King and to his administration of the government of this kingdom, and most unlawfully, wickedly, and maliciously designing, as much as in him lay, to bring our said Lord the King, and his administration of the government of this kingdom and the persons employed by him in the administration of the government of this kingdom into great and public hatred and contempt among all his liege subjects, and to alienate and withdraw from our said Lord the King the cordial love and affection, true and due obedience, fidelity and allegiance of the subjects of our said Lord the King, did print and publish a certain scandalous, malicious, and seditious libel" [setting out the words which I have copied].

Mr. Perry appeared as his own counsel, and defended himself with singular modesty, tact, and eloquence.

At his request the following paragraph was allowed to be read from the same newspaper :

"The Prince has thought it his duty to express to his Majesty his firm and unalterable determination to preserve the same course of neutrality which he has maintained, and which, from every feeling of dutiful attachment to his Majesty's person, from his reverence of the virtues and from his confidence in the wisdom and solicitude of his Royal Father for the happiness of his people, he is sensible ought to be the course that he should pursue."

Lord Ellenborough, in summing up to the Jury, after commenting upon the weight to be given to this paragraph, thus proceeded :

"The next and most important question is, what is the fair, honest, candid construction to be put upon the words standing by themselves? Is the passage set out in the information *per se* libellous? The first sentence easily admits of an innocent interpretation. 'What a crowd of blessings rush upon one's mind that might be bestowed upon the country in the event of a total change of system!' The fair meaning of the expression, 'change

of system,' I think is a change of political system—not a change in the frame of the established government—but in the measures of policy which have been for some time pursued. By 'total change of system' is certainly not meant subversion or *demolition*, for the descent of the crown to the successor of his Majesty is mentioned immediately after. The writer goes on to speak of the blessings that may be enjoyed upon the accession of the Prince of Wales; and therefore cannot be understood to allude to a change inconsistent with the full vigour of the monarchical part of the constitution. Now I do not know that merely saying, there would be blessings from a change of system, without reference to the period at which they may be expected, is expressing a wish or a sentiment that may not be innocently expressed in reviewing the political condition of the country. The information treats this as a libel on the person of his Majesty, and his personal administration of the government of the country. But there may be error in the present system, without any vicious motives, and with the greatest virtues, on the part of the reigning Sovereign. He may be misled by the ministers he employs, and a change of system may be desirable from their faults. He may himself, notwithstanding the utmost solicitude for the happiness of his people, take an erroneous view of some great question of policy, either foreign or domestic. I know but of ONE BEING to whom error may not be imputed. If a person who admits the wisdom and the virtues of his Majesty, laments that in the exercise of these he has taken an unfortunate and erroneous view of the interests of his dominions, I am not prepared to say that this tends to degrade his Majesty, or to alienate the affections of his subjects. I am not prepared to say that this is libellous. But it must be with perfect decency and respect, and without any imputation of bad motives. Go one step farther, and say or insinuate, that his Majesty acts from any partial or corrupt view, or with an intention to favour or oppress any individual or class of men, and it would become most libellous. However, merely to represent that an erroneous system of government obtains under his Majesty's reign, I am not prepared to say exceeds the freedom of discussion on political subjects which the law permits. Then comes the next sentence: 'Of all monarchs, indeed, since the Revolution, the successor of George the Third will have the finest opportunity of becoming nobly popular.' This is more equivocal; and it will be for you, gentlemen of the Jury, to determine what is the fair import of the words employed. Formerly it was the practice to say, that words were to be taken in the more lenient sense: but that doctrine is now exploded; they are not to be taken in the more lenient or more severe sense, but in the sense which fairly belongs to them, and which

they were intended to convey. Now, do these words mean that his Majesty is actuated by improper motives, or that his successor may render himself nobly popular by taking a more lively interest in the welfare of his subjects? Such sentiments, as it would be most mischievous, so it would be most criminal to propagate. But if the passage only means that his Majesty during his reign, or any length of time, may have taken an imperfect view of the interests of the country, either respecting our foreign relations, or the system of our internal policy, if it imputes nothing but honest error, without moral blame, I am not prepared to say that it is a libel. The extract, read at the request of the defendants, does seem to me too remote in point of situation in the newspaper to have any material bearing on the paragraph in question. If it had formed a part of the same discussion, it must certainly have tended strongly to show the innocence of the whole. It speaks of that which every body in his Majesty's dominions knows, his Majesty's solicitude for the happiness of his people; and it expresses a respectful regard for his paternal virtues. What connection it has with the passage set out in the information, it is for you to determine. Taking that passage substantively and by itself, it is a matter, I think, somewhat doubtful, whether the writer meant to calumniate the person and character of our august Sovereign. If you are satisfied that this was his intention by the application of your understandings honestly and fairly to the words complained of, and you think they cannot properly be interpreted by the extract which has been read from the same paper, you will find the defendants *guilty*. But if, looking at the obnoxious paragraph by itself, you are persuaded that it betrays no such intention; or if, feeling yourselves warranted to import into your consideration of it a passage connected with the subject, though considerably distant in place and disjointed by other matter, you infer from that connection that this was written without any purpose to calumniate the personal government of his Majesty, and render it odious to his people, you will find the defendants *not guilty*. The question of intention is for your consideration. You will not distort the words, but give them their application and meaning as they impress your minds. What appears to me most material, is the substantive paragraph itself; and if you consider it as meant to represent that the reign of his Majesty is the only thing interposed between the subjects of this country and the possession of great blessings, which are likely to be enjoyed in the reign of his successor, and thus to render his Majesty's administration of his government odious, it is a calumnious paragraph, and to be dealt with as a libel. If, on the contrary, you do not see that it means distinctly, according to your

reasoning, to impute any purposed mal-administration to his Majesty, or those acting under him, but may be fairly construed as an expression of regret that an erroneous view has been taken of public affairs, I am not prepared to say that it is a libel. There have been errors in the administration of the most enlightened men. I will take the instance of a man who for a time administered the concerns of this country with great ability, although he gained his elevation with great crime—I mean *Oliver Cromwell*. We are at this moment suffering from a most erroneous principle of his government in turning the balance of power against the *Spanish* monarchy in favour of the House of *Bourbon*. He thereby laid the foundation of that ascendancy which, unfortunately for all mankind, *France* has since obtained in the affairs of *Europe*. The greatest monarchs who have ever reigned—monarchs who have felt the most anxious solicitude for the welfare of their country, and who have in some respects been the authors of the highest blessings to their subjects, have erred. But could a simple expression of regret for any error they had committed, or an earnest wish to see that error corrected, be considered as disparaging them, or tending to endanger their government? Gentlemen, with these directions the whole subject is for your consideration. Apply your minds candidly and uprightly to the meaning of the passage in question; distort no part of it for one purpose or another; and let your verdict be the result of your fair and deliberate judgment.”

The defendant was acquitted.* As soon as the foreman of the jury had pronounced the verdict, Sir Vicary Gibbs, the Attorney-General, turning round to me, said, “We shall never get another verdict for the Crown while the Chief Justice is in opposition.” His Lordship certainly since the dissolution of the Talents Administration had kept up an intimacy with Addington and the Grenvilles, but it was a mere piece of Mr. Attorney’s spleen to suppose that the Judge was actuated by any desire to mortify the existing Government, although the possibility of such a suspicion is argument enough against a Chief Justice of the King’s Bench ever being a member of any Cabinet.

Lord Ellenborough had a violent hatred of libellers,

* 31 St. Tr. 338: 2 Campb. 398.

and generally animadverted upon them with much severity. He soon after did his best to convict Leigh

Hunt, then the editor of the *Examiner*, upon
A.D. 1811.

an *ex-officio* information for publishing an article against the excess to which the punishment of flagellation had been carried in the army :—

“Gentlemen,” said he to the jury, “we are placed in a most anxious and awful situation. The liberty of the country—every thing that we enjoy—not only the independence of the nation, but whatever each individual among us prizes in private life, depends upon our fortunate resistance to the arms of Buonaparte and the force of France, which I may say is the force of all Europe combined under that formidable foe. It becomes us, therefore, to see that there is not in addition to the prostrate thrones of Europe an auxiliary within this country, and that he has not the aid for the furtherance of his object of a British press. It is for you, between the public on the one hand, and the subject on the other, to see that such a calamity does not overwhelm us. Is this the way of temperate discussion? The first thing that strikes us is this ONE THOUSAND LASHES in large letters. What is this but to portray the punishment as a circumstance of horror, and excite feelings of detestation against those who had inflicted and compassion for those who had suffered it? Then he goes into an irritating enumeration of the miseries which do arise from the punishment, and which do harrow up the feelings of men who consider them in detail. This punishment is an evil which has subsisted in the eyes of the legislature and of that honourable body who constitute the officers of the army, and it has not been remedied. If there are persons who really feel for the private soldier, why not remedy the evil by private representation? * But when, as at this moment, everything depends on the zeal and fidelity of the soldier, can you conceive that the exclamation ONE THOUSAND LASHES, with strokes underneath to attract attention, could be for any other purpose than to excite disaffection? Can it have any other tendency than that of preventing men from entering into the army? Can you doubt that it is a means intended to promote the end it is calculated to produce? If its object be to discourage the soldiery, I hope it will be unavailing. These men who are

* This reminds one of the Emperor Alexander's observation when he visited England in 1815, that “he thought the English ‘Opposition’ a very useful in-

stitution, but he rather wondered why they did not convey their remonstrances to the King's Ministers in private.”

represented as being treated ignominiously have presented a front—and successfully—to every enemy against which they have been opposed. On what occasion do you find the soldiery of Great Britain unmanned by the effect of our military code? This publication is not to draw the attention of the legislature or of persons in authority with a view to a remedy, but seems intended to induce the military to consider themselves as more degraded than any other soldiers in the world—and to make them less ready at this awful crisis to render the country that assistance without which we are collectively and individually undone. I have no doubt that this libel has been published with the intention imputed to it, and that it is entitled to the character given to it by the information.*

Nevertheless, to the unspeakable mortification of the noble Judge, the jury found a verdict of *Not Guilty*.†

Such scandal was excited by the mode in which Government prosecutions for libel were now instituted and conducted, that Lord Holland March 4. brought the subject before the House of Lords, and, after a long speech, in which he complained of the power of the Attorney-General to file criminal informations, and the manner in which it had recently been abused, moved for a return of all informations *ex-officio* for libel from 1st January, 1801, to 31st December, 1810.

Lord Ellenborough: "The motion of the noble Baron includes the period during which so humble an individual as myself had the honour of filling the office of Attorney-General. Whether he means to refer to my conduct I know not—but as he made no allusion to it, I do not think myself bound to defend what has not been attacked; but I must say with reference to the learned gentlemen who succeeded me, that their discharge of their public duty ought not lightly or captiously to be censured nor made the subject of invidious investigation on grounds of hazardous conjec-

* This was manifestly usurping the functions of the Jury as to matter of fact; but it was then erroneously supposed to be in conformity to the power given by Fox's Libel Act, which is merely for the Judge to deliver his opinion on matter of law as in other cases.

† 31 St. Tr. 367. This acquittal was mainly produced by the eloquence of Mr. Brougham; but in spite of all his efforts another client was convicted at Lincoln before Baron Wood, for publishing the same libel in a country newspaper. *Rex v. Drakard*, 31 St. Tr. 495.

ture. The law of informations *ex-officio* is the law of the land, resting on the same authority with the rights and privileges which we most dearly prize. It is as much law as that which gives the noble Lord the right of speaking in this House; it is as much law as the law which puts the crown of this realm on the brow of the Sovereign. If the noble Lord questions the expediency of the law of informations, why not propose that it be repealed? This would be the direct and manly course. I deprecate in this House violent and vague declamations. [*Hear! hear!* from Lord Holland.] I am aware to what I subject myself. The noble Lord may call all that I have said a mere *tirade*. [*Hear! hear!* from Lord Holland.] I am used to tumults and alarms—they never yet could put me down. Were I to die next moment, I will not yield to violence. My abhorrence of the licentiousness of the press is founded on my love of civil liberty. The most certain mode of upsetting our free constitution is by generating a groundless distrust of the great officers of justice, and teaching the people to despise the law along with those who administer it. I repeat that I know nothing more mischievous in its tendency than inoculating the public mind with groundless apprehensions of imaginary evils."

The violence of this language called forth considerable animadversion from several noble Lords. Lord Stanhope declared that he was afraid of entering into any controversy with the "vituperative Chief Justice"—justifying himself by the example of a peer celebrated for his politeness, of whom he told this anecdote: Lord Chesterfield, when walking in the street, being pushed off the flags by an impudent fellow, who said to him, "I never give the wall to a scoundrel," the great master of courtesy immediately took off his hat, and, making him a low bow, replied, "Sir, I always do." *

Lord Holland: "The noble and learned Chief Justice has complained of the vehemence and passion with which I have delivered myself; but he should have had the charity to recollect that I have not the advantage of those judicial habits from which he has profited so much. The practice of the duties of the highest criminal judge and the exercise of temper which those duties require can alone bring the feelings of men to a perfect

* 19 Parl. Deb. 123-174.

state of discipline, and produce even in the delivery of the strongest opinions the dignified and dispassionate tone which ever adds grace to the noble and learned Lord's oratorical efforts, and has so signally marked his demeanour in this night's debate."

Sir James Mackintosh, who was present at this debate, in giving an account of it, says:—"I was much delighted with the ingenious, temperate, and elegant speech of Lord Holland on the abominable multiplication of criminal informations for libels, and much disgusted with the dogmatism of Lord Ellenborough's answer. Lord Holland spoke with the calm dignity of a magistrate, and Lord Ellenborough with the coarse violence of a demagogue."*

The Chief Justice's next remarkable appearance in the House of Lords was in a discussion respecting the "Delicate Investigation." While he was in the Cabinet in 1806 a commission had been addressed to him and several others by George III. to inquire into certain charges brought forward against the Princess of Wales. After examining many witnesses, they presented a report acquitting her of conjugal infidelity, but stating that she had been guilty of great levity of conduct, and recommending that she should be admonished to conduct herself more circumspectly in future.† These animadversions excited the deep resentment of her Royal Highness and her friends, and were complained of in various publications and speeches, which asserted that the secret inquiry before the Com-

March, 22,
1813.
Lord Ellen-
borough
and the
"DELICATE
INVESTIGA-
TION."

* Life of Mackintosh.

† I have seen the original draught of the Report in Lord Ellenborough's handwriting, and the draught of a second very elaborate Report by him upon a communication to the Commissioners from the King. After a very long commentary on the evidence of the witnesses, the Commissioners say that "there are no sufficient grounds for

bringing her Royal Highness to trial for adultery; but that she had comported herself in a manner highly unbecoming her rank and her character." Lord Ellenborough appears throughout the whole affair to have taken infinite pains to get at the truth, and to have been actuated by a most earnest desire to do impartial justice to all parties.

missioners had been carried on unfairly, that improper questions had been put, and that the evidence had not been correctly taken down. Without making any motion, or giving any notice, the noble and learned Lord rose in his place, and thus addressed his brother Peers:—

“My Lords, various considerations have at different moments operated upon my mind to induce me to forbear the execution of a task which now, after the most mature and deliberate consideration, I am compelled to perform as a duty that I owe to my own character and honour, as well as to the character and honour of those who were joined with me in a most important investigation. The first of these considerations was a consciousness of rectitude, I hope not presumptuously indulged, which made me backward in noticing the slanderous productions recently circulated against the conduct of individuals employed in situations of the highest trust. To have betrayed an anxious irritability of feeling would have appeared to imply an acknowledgment of imperfection among those who have faithfully discharged an arduous and painful duty. There are cases where a sufficient vindication may be found in the candid judgment of mankind, where opportunities of forming an opinion not very erroneous are afforded to the public. Such, however, is not the situation of the individual who now addresses your Lordships. When the exculpation rests solely in the hands of the person accused, it becomes him, on the credit of the esteem and respect with which his assertion has been hitherto received, to employ that assertion, given in a manner the most solemn and impressive, for his own vindication.”—

After adverting to his reluctance to run any risk of making disclosures contrary to his oath as a Privy Councillor, and stating the issuing of the Commission, he thus proceeded:—

“In that Commission I found my name included; but the subject of inquiry, the intention to issue the Commission, and the Commission itself, were all profound secrets to me, until I was called upon to discharge the high and sacred duty that upon me was thus imposed. I felt that much was due to this command, and it was accompanied with some inward satisfaction that the integrity and zeal with which I had endeavoured to

discharge my public functions, had made a favourable impression upon the mind of my Sovereign; notwithstanding which, the mode in which this command was obeyed has been made the subject of the most unprincipled and abandoned slanders. It has been said, that after the testimony had been taken in a case where the most important interests were involved, the persons intrusted had thought fit to fabricate an unauthorized document, purporting to relate what was not given, and to suppress what was given in evidence. My Lords, I assert that the accusation is as false as hell in every part! What is there, let me ask, in the transactions of my past life—what is there in the general complexion of my conduct, since the commencement of my public career, that should induce any man to venture on an assertion so audacious? That it is destitute of all foundation would, I trust, be believed even without my contradiction; but where it originated or how it was circulated I know not. I will not trench on the decorum that ought to be observed in the proceedings of this House further than in such a case is necessary: but I will give the lie to such infamous falsehood, and I will, to the last hour of my existence, maintain the truth of that which I know to be founded on fact. It occurred to me, my Lords, that in order to facilitate the proceedings, and at the same time to conduct them with the secrecy that was so important, it would be fit to select a person, in whom especial confidence might be reposed, for the purpose of recording the examinations, by taking down the evidence from the mouth of the witness in the most correct form. I thought that both the secrecy and accuracy required would be best consulted and secured by appointing an honourable and learned gentleman, who then held the office of Solicitor-General, Sir Samuel Romilly. On every occasion when testimony was given, with only one exception, we had the benefit of his presence; but on that single occasion, whether it was that the Commissioners found themselves at leisure to proceed, or whether they were unwilling that the witnesses should be called upon unnecessarily to attend again, I do not exactly remember; but it so happened that we determined to pursue our inquiries without his aid, for a messenger who had been despatched for Sir Samuel Romilly returned with information that he could not be found. It then occurred to my noble colleagues and to myself that we could take down the evidence ourselves, and as I was in the particular habit of recording testimony (discharging, I believe, twice as much of that duty as any other individual in the kingdom) it was resolved that on that evening I should hold the pen. I complied; and I declare and make the most solemn asseveration (which I should be happy, were it possible, to confirm and verify

under the sacred sanction of an oath), that the examination that evening taken down by me proceeded, in every part, from the mouth of the witness—that the testimony, at its termination, was read over to the witness—that the witness herself read and subscribed her name to the concluding sheet, as she had previously affixed her initials to that on which the evidence was commenced. Were I to advert to the terms in which that evidence was couched, I fear that I should be trenching upon the terms of the oath by which my duty is bound; but thus much I may say, upon the character of the paper (which I wish could be laid before the House without provoking a discussion or leading to improper disclosures, that I would not for a thousand reasons have promulgated), that if it could be inspected, the strongest internal evidence would be found upon its face to show that it was a genuine production as taken from the mouth of the witness: if it could be consulted, many interlineations would be noticed, qualifying and altering the text according to the wish of the witness, and every individual reading it with the application of common sense, would find that these alterations could only have been made at the time the person was under examination. I do not think that I bestow upon myself too great a share of praise, when I say that I may take credit to myself at least for accuracy in details of this kind, and I will venture to maintain that there is not in the original document one word which was not uttered, approved and signed, after the most deliberate consideration by the witness.

“My Lords, if I could be guilty of the negligence, or rather the wickedness imputed, are my noble colleagues and friends so negligent or so wicked as to connive at a crime of such unparalleled enormity? I am not aware that a syllable the witness wished to add was omitted, and I speak from the most perfect recollection and the most decided conviction when I say, that the minutes made by me contained the whole of the evidence, and nothing but the evidence, of the person then under examination. I am not in the habit of making complaints against publications; but if in any case it were necessary, it would be more peculiarly so in the present, where I am charged with a crime not only inconsistent with the functions of the high office I hold, but inconsistent with the integrity that, as a man, I should possess. Surely, for myself and my noble friends, I may be allowed to insist that we anxiously and faithfully discharged a public duty, and I hope, in the face of the House and of the country, we shall stand clear of this most base and miscreant imputation.

“I have heard it said, but the charge can only originate in the grossest stupidity, that we, as Commissioners, misbehaved

ourselves in various respects. Folly, my Lords, has said, that in examining the witnesses we put leading questions. The accusation is ridiculous—it is almost too absurd to deserve notice. In the first place, admitting the fact, can it be objected to a Judge that he puts leading questions? Can it be objected to persons in the situation of the Commissioners that they put leading questions? I have always understood, after some little experience, that the meaning of a leading question was this, and this only, that the Judge restrains an advocate who produces a witness on one particular side of a question, and who may be supposed to have a leaning to that side of the question, from putting such interrogatories as may operate as an instruction to that witness how he is to reply to favour the party for whom he is adduced. The counsel on the other side, however, may put what questions he pleases, and frame them as best suits his purpose, because then the rule is changed, for there is no danger that the witness will be too complying. But even in a case where evidence is brought forward to support a particular fact, if the witness is obviously adverse to the party calling him, then again the rule does not prevail, and the most leading interrogatories are allowed. But to say that the Judge on the bench may not put what questions, and in what form he pleases, can only originate in that dulness and stupidity which is the curse of the age. Folly says again, that the testimony of the witness should have been recorded in question and answer. When, I ask, was it ever done? is there a single instance of the kind? will the most grey-headed judicial character in the country show a solitary example of the kind? It is impossible; and undoubtedly the most convenient mode was for the witness to see his evidence in one unbroken narrative, without the interruption of questions composed of words which he never employed—it is the language of the witness and not of the interrogator that is required. Such accusations are the offspring of a happy union of dulness and stupidity, aided by the most consummate impudence that was ever displayed.

“It would, I confess, be a great satisfaction to my mind and to those of my noble colleagues, if we had any means, without violating sacred and indispensable obligations, of attesting the truth of these facts; but the nature of the inquiry forbids it. We cannot produce the evidence itself; I dare not give the explanation that would set the matter for ever at rest; and in the situation I hold, and under all the circumstances, it is impossible that the Prince Regent should be addressed that the original document might be laid before the House.

“My Lords, this malignant and unfounded charge—this base and nefarious calumny—is one of the worst symptoms of the times

in which we live. It shows an indifference in the public mind as to truth and falsehood; it originates in malice and is supported by ignorance; it is tossing firebrands in all directions, leaving those who are in danger from the flames to escape as well as they can, sometimes almost by a miracle. This, my Lords, is one of the most hazardous attempts; it is a cruel attack upon those who are unable to defend themselves. We have struggled, but I hope not in vain, to defeat the nefarious and horrible design. I feel that it is impossible to give the accusation a more positive denial. I have declared that it is false from the commencement to the conclusion, and I shall sit down ashamed that it has been necessary for me to say anything: I feel almost ashamed that any vindication was required. I do not say that I am personally indifferent on a question of such undoubted magnitude; but if it regarded myself only, I could be well content to leave such degraded calumnies to their own refutation. I was called upon to discharge a public duty; that duty I assert I discharged faithfully; and that I took down the depositions fairly, fully, and honestly, I protest on my most solemn word and asseveration. I have spoken merely to vindicate myself and my colleagues. That vindication I trust is complete. We only wish to stand well in the opinion of our country as honest men who have faithfully discharged a great and painful duty; and let it be recollected, that having no means of resorting to proof, we are compelled to rest our exculpation on a flat, positive, and complete denial.*

All candid men believed that the investigation had been carried on with perfect fairness.—but the violence of the noble and learned Lord's vindication was regretted, and many questioned the soundness of his positions as to the unlimited right of a Judge to put leading questions, and still more denied that in such an inquiry it was proper to give only the substance of the evidence of the witnesses, compounding questions and answers,—instead of writing down the questions and the answers at full length, so as to obviate the possibility of misrepresentation or mistake.

For several Sessions following, Lord Ellenborough took no part in debate upon any political subject, and confined his efforts in the House of Lords to a strenuous

* 25 Parl. Deb. 207.

opposition to Bills for amending either the civil or criminal law, all which he denounced as Jacobinical and revolutionary.

In 1816 he zealously supported the severe Alien Bill which ministers still considered necessary ^{11th June.} after the return of peace; and, to show that at common law the King has a right by the royal prerogative to send all aliens out of the kingdom, he cited a petition of the merchants of London in the reign of Edward I., praying that monarch to do so. On a subsequent evening Earl Grey ventured to question the bearing of this precedent, which, he said, had been brought forward in "the proud display of a noble and learned Lord."

Lord Ellenborough: "I rise, my Lords, to repel with indignation the base and calumnious imputation against me by the noble Earl, of having falsified a document, namely, the Petition of the City of London to Edward I. I hold in my hand a copy of that document, and its contents will show how unjustly I have been attacked."

Having read it in a loud and angry voice, he added in a very softened tone as he was about to resume his seat:

"I thought it due, my Lords, to my own character to make this explanation, *and I trust that I have done it without any asperity of language.* [A loud laugh from both sides of the House.] That laugh awakens a sentiment in my mind which I will not express. All I shall say is, that a man who is capable of patiently enduring the imputation of having falsified a document is capable of that atrocity."*

Lord Ellenborough's last speech in the House of Lords was on the 12th of May, 1817, in opposition to Lord Grey's motion for a censure on Lord Sidmouth's circular letter, inviting all the magistrates of England

* 34 Parl. Deb. 1069-1143.

to interfere for the purpose of putting down seditious publications, and telling them that it was their duty to imprison all the authors and vendors who could not give bail for their appearance at Quarter Sessions to answer indictments against them. Recollecting that he owed his promotion as Attorney-General and as Chief Justice to the Home Secretary, who was now accused, and who was generally supposed to have been guilty of a great indiscretion, if not of an illegal stretch of authority, he redeemed the pledge he had given in these words, "I am yours, and let the storm blow from what quarter of the hemisphere it may, you shall always find me at your side." The noble and learned Lord now delivered a very long and elaborate argument to prove that, by the common law of England, Justices of the Peace have power to hold to bail in cases of libel. This was answered by Lord Erskine, who insisted that the assumed power was an entire novelty and a dangerous usurpation. The Lords, persuaded by the learning and eloquence of the Chief Justice, or blindly determined to support the Government, rejected the motion by a majority of 75 to 19.*

After the permanent insanity of George III. and the establishment of the Regency, Lord Ellenborough was a member of the Queen's Council, to assist her in the custody and care of the King's person. In his capacity he had a daily report sent to him in a red box, which was handed up to him on the bench, and he frequently attended meetings of the Council at Windsor. Having been absent from one of these, he received the following letter from Lord Eldon, which gives an interesting account of the afflicted monarch and his family during this calamity :—

Lord Ellenborough a member of the Queen's Council, as Custodian of the King's person during the regency.

A.D. 1811.

* 36 Parl. Deb. 445-516.

“(*Confidential.*)

“ My DEAR LORD,

“ The Archbishop being from town, I trouble you with a sketch of yesterday's proceedings at Windsor, your absence from which I greatly lamented, especially as the King wished to see you, and you would have been glad to see him.

“ We had good and bad. Upon our arrival we received the daily account signed by all the doctors and Dundas. You must *see that*, it being by far the best account we have ever had. They state, I think, that no delusions had been betrayed for three days,—Bott, the page, said none since Tuesday. They stated that, if the schemes and plans remained, they remained in a less degree than they had been before observed to exist ; and they unanimously recommended that the King should have greater freedom and liberties, and more of communication with others than had been allowed him—that this would try the solidity, and enable them to judge of the permanence of his improved state.

“ I then desired them, by a written question, to *specify* in writing *what* they recommended, and not to leave us to judge of what was to be done under their *general* recommendation.

“ They recommended—then in writing—unanimously :

“ 1. That Colonel Taylor should be with the King, his intercourse limited in degree, that is, as I understand it, by their prudence.

“ 2. That the King's chaplain should read the daily prayers in *his room*, not his chapel.

“ 3. That Lord Arden, Lord St. Helens, and others of that description, should visit and walk with him.

“ 4. That he should have his keys restored to him.

“ Whilst they were consulting on these measures, the Dukes of York and Kent came to the Council, *as we believed*, by the Queen's desire, to represent that their walk had been very uncomfortable ; that the King betrayed no delusion, but that he was very, very full of plans and schemes, much more so than he had lately been to the Duke of York, and that they were particularly alarmed at his conversation about having his keys. I should here tell you that the Queen sent for me immediately upon my arrival at Windsor, and, in a conversation I had with her Majesty and the Princess Augusta, expressed great apprehensions about the keys, both representing great improvement in the King. I found that this subject had been mentioned on *Wednesday* to the Council then at Windsor, and that the King had learnt that it was under their consideration. The Dukes also stated that the King's conversation was hurried, and did

not admit of their saying one word. This was all delivered by the Dukes themselves to Dr. Halford, and afterwards to us, and by the Council it was all delivered in charge to all the physicians for their serious consideration.

"In the mean time, the Master of the Rolls and I went to the King, he having himself desired to see you and us. His manner to me was much kinder, and he had in the course of the week observed to Willis that he thought me entitled to a belief on his part that I was right in what I had done, though he could not make it out how I could be so, and why I had not resigned the Seal. Willis had told him that I could not resign the Seal, that his Majesty was not well enough to accept it on resignation, and that the Prince, till he was Regent, could not have it offered to him, and that therefore it could not be resigned till the act his Majesty blamed on my part was done. He expressed surprise he had not adverted to this himself. The Queen or Princess Augusta had told me that he studiously called me Lord Eldon, and not Chancellor, or to that effect, and that he had told his family that when you and Grant and I were with him, he had been as reserved as he could towards me, and had avoided calling me Chancellor, but that he was in good humour again. Both Grant and I thought him so: his conversation was calm, quiet, connected, admitting of free conversation on our part, all the subjects good, the whole manner right. I think Grant will tell you we left the room sunk with grief that there could be any thing wrong where all appeared so right. He said not a syllable, however, of himself, his situation, or his plans, and we understood it to be his determination not to make any request of any kind, of anybody, respecting himself. Upon our return at the end of three-quarters of an hour's visit, which concluded in a dignified bow upon Willis's coming in, and a kind speech towards me as Chancellor, we found that the doctors were ready with their written paper (which you must see), stating that *upon full consideration of all circumstances*, they still recommend the measures before mentioned, *including the restoration of the keys*.

"We were much puzzled, but we all agreed that we could not venture to control the doctors' unanimous and deliberate advice.

"We, therefore, in a written paper advised the Queen to restore the keys;—in that paper stating (for her sake) that she had hitherto retained them under our advice; and in another paper we directed the physicians, if any improper use of the keys was attempted, to interpose to prevent it, and inform the Council of the occurrence. This was necessary, as the keys open presses in which there are papers of consequence, and, it is understood, jewels of value. Taylor's attendance is to see that nobody sees any papers but the King, T. being acquainted with them all; and he has orders not to obey any orders either about papers,

jewels, or other things. Willis and Bott expressed the utmost confidence that the King would do nothing wrong with his keys. Bott stated that he could not have answered for that a week ago, but all thought the recovery going on very rapidly.

"The prayers were to be said in the private room, because the physicians wished that the King should not yet go to the chapel, which is up stairs, as that step would lead him to think that he was to be up stairs as much as he wished. We desired that a particular account might be sent us to-day of the effect of all this, which you will receive in the course of circulation. I have detailed this as accurately as I can remember it, because it's natural *you* should know it, and because it tends to show, I think, that attendance at meetings becomes now of much importance. One of the doctors observed to the D. of M. that, in all this illness, much of improper communication as the King had made, he had never said a syllable upon state matters. This, I believe, was Baillie.

"In our papers of yesterday, which upon the Archbishop's return you should see, we noticed your absence, as we did the Duke of Montrose's formerly, that, if we were blameable, it may be recorded that you are not so. I have communicated these matters to the Prince last night, who was very good-humoured and reasonable upon them.

"Yours, my dear Lord,

"ELDON."

When this letter was written Lord Eldon had not really been taken into favour by the Regent, and, on the contrary, he expected to be speedily turned out of office. He therefore still clung with tenacity to the forlorn hope of the King's recovery, and he was exceedingly anxious to have Lord Ellenborough's co-operation in case there should appear to be any ground for restoring his Majesty to the throne. But the Regent soon after having for ever renounced "his early friends," Lord Eldon changed his tactics, and encouraged the belief that the King was incurably mad. Lord Ellenborough appears to have refused always to join in any of these intrigues, and to have been only solicitous that the truth should be disclosed, and that justice should be done to the King, to the Prince and to the Nation.*

* See *Lives of Chancellors*, ch. 201.

CHAPTER LI.

CONCLUSION OF THE LIFE OF LORD ELLENBOROUGH.

I HAVE now only to mention some criminal cases which arose before Lord Ellenborough in his later years. Of these the most remarkable was Trial of Lord Cochrane. Lord Cochrane's, as this drew upon the Chief Justice a considerable degree of public obloquy, and causing very uneasy reflections in his own mind, was supposed to have hastened his end. In the whole of the proceedings connected with it he was no doubt actuated by an ardent desire to do what was right, but in some stages of it, his zeal to punish one whom he regarded as a splendid delinquent, carried him beyond the limits of mercy and of justice.

A.D. 1814. Lord Cochrane (since Earl of Dundonald) was one of the most gallant officers in the English navy, and had gained the most brilliant reputation in a succession of naval engagements against the French. Unfortunately for him, he likewise wished to distinguish himself in politics, and, taking the Radical line, he was returned to Parliament for the city of Westminster. He was a determined opponent of Lord Liverpool's administration, and at popular meetings was in the habit of delivering harangues of rather a seditious aspect, which induced Lord Ellenborough to believe that he seriously meant to abet rebellion, and that he was a dangerous character. But the gallant officer really was a loyal subject, as well as enthusiastically zealous for the glory of his country. He had an uncle named Cochrane, a merchant, and a very unprincipled

man, who, towards the end of the war, in concert with De Berenger, a foreigner, wickedly devised a scheme by which they were to make an immense fortune by a speculation on the Stock Exchange. For this purpose they were to cause a sudden rise in the Funds, by spreading false intelligence that a preliminary treaty of peace had actually been signed between England and France. Everything succeeded to their wishes; the intelligence was believed, the Funds rose, and they sold on time bargains many hundred thousand pounds of 3 per cents. before the truth was discovered. It so happened that Lord Cochrane was then in London, was living in his uncle's house, and was much in his company, but there is now good reason to believe that he was not at all implicated in the nefarious scheme. However, when the fraud was detected,—partly from a belief of his complicity, and partly from political spite, he was included in the indictment preferred for the conspiracy to defraud the Stock Exchange.

The trial coming on before Lord Ellenborough, the noble and learned Judge, being himself persuaded of the guilt of all the defendants, used his best endeavours that they should all be convicted. He refused to adjourn the trial at the close of the prosecutors' case about nine in the evening, when the trial had lasted twelve hours, and the Jury as well as the defendants' counsel were all completely exhausted, and all prayed for an adjournment. The following day in summing up, prompted no doubt by the conclusion of his own mind, he laid special emphasis on every circumstance which might raise a suspicion against Lord Cochrane, and elaborately explained away whatever at first sight appeared favourable to the gallant officer. In consequence the Jury found a verdict of GUILTY against all the defendants.

Next term Lord Cochrane presented himself in Court

to move for a new trial, but the other defendants convicted along with him did not attend. He said truly that he had no power or influence to obtain their attendance, and urged that his application was founded on circumstances peculiar to his own case. But Lord Ellenborough would not hear him, because the other defendants were not present.* Such a rule had before been laid down, but it is palpably contrary to the first principles of justice, and it ought immediately to have been reversed.

Lord Cochrane was thus deprived of all opportunity of showing that the verdict against him was wrong, and, in addition to fine and imprisonment, he was sentenced to stand in the pillory. Although as yet he was generally believed to be guilty, the award of this degrading and infamous punishment upon a young nobleman, a member of the House of Commons, and a distinguished naval officer, raised universal sympathy in his favour. The Judge was proportionably blamed, not only by the vulgar, but by men of education on both sides in politics, and he found upon entering society and appearing in the House of Lords that he was looked upon coldly. Having now some misgivings himself as to the propriety of his conduct in this affair, he became very wretched. Nor was the agitation allowed to drop during the remainder of Lord Ellenborough's life, for Lord Cochrane, being expelled the House of Commons, was immediately re-elected for Westminster; having escaped from the prison in which he was confined under his sentence, he appeared in the House of Commons; in obedience to the public voice, the part of his sentence by which he was to stand in the pillory was remitted by the Crown; and a Bill was introduced into Parliament altogether to abolish the pillory as a punishment, on account of the manner in which the

* 3 Maule and Selwyn, 10, 67.

power of inflicting it had been recently abused. It was said that these matters preyed deeply on Lord Ellenborough's mind and affected his health. Thenceforth he certainly seemed to have lost the gaiety of heart for which he had formerly been remarkable.*

In Trinity Term, 1817, there came on at the King's Bench bar the memorable trial of Dr. James Watson for high treason, when the Chief Justice exerted himself greatly beyond his strength, having to contend with the eccentric exuberance of Sir Charles Wetherall, greatly piqued against the Government because, though a steady Tory, he had been passed over when he expected to have been appointed Solicitor-General,—and with the luminous energy of Serjeant Copley, who on this occasion gained the reputation which in rapid succession made him, with universal applause, Chief Justice of Chester, Solicitor and Attorney-General, Master of the Rolls, Lord Chancellor, and Baron Lyndhurst.† These two distinguished advocates, cordially concurring in the tender of their services, were assigned as counsel for the prisoner and struggled with unsurpassed zeal in his defence. Conscientiously believing that the insurrection in which Watson had been engaged was planned by him for the purpose of overturning the Monarchy, the venerable judge was honestly desirous of obtaining a conviction. But, *quantum mutatus ab illo*—he presented only a ghost-like resemblance of his former mighty self. When Sir Charles Wetherall described Castle, the accomplice, the principal witness for the Crown, as “an indescribable villain” and “a

* Many years afterwards, Lord Cochrane's case being reconsidered, he was restored to his rank in the navy, he was intrusted with an important naval command, and eulogies upon his services and upon his character were pronounced by Lord Brougham and other Peers.

† Lord Castlereagh was sitting on the Bench during the trial, and expressing great admiration of his Whig-Radical eloquence, is said to have added, “I will set my rat-trap for him—baited with *Cheshire cheese*.”

bawdy-house bully," the enfeebled Chief Justice exclaimed that "terms so peculiarly coarse might have been spared out of regard to the decorum of the Court," and he animadverted severely upon some of the gesticulations of the same irrepressible counsel, threatening to proceed to a painful act of authority if the offence were repeated; but the deep, impressive tones and the heart-stirring thoughts with which from the bench he used to create awe and to carry along with him the sympathies of the audience was gone; and, notwithstanding formidable proofs to make out a case of treason, an acquittal was early anticipated.

The trial having lasted seven long days, the Chief Justice was much exhausted, and in summing up, he was obliged to ask Mr. Justice Bayley to read a considerable part of the evidence. His strength being recruited, he thus very unexceptionably concluded his charge:—

"You must now proceed to give that verdict which I trust you will give from the unbiassed impulse of honest and pure minds acting upon the subject before you, and which will have the effect of affording protection and immunity to the prisoner at the bar if he shall be found entitled to protection and immunity from the charges made against him; but, in another point of view, affording also that security to the laws and people of this land, and to its government as it subsists under those laws and is administered by the King and the two Houses of Parliament; thus satisfying your own conscience and the expectation of your country, unbiassed by any consideration which might affect the impartiality of that justice which you are under so many solemn sanctions this day required to administer. Gentlemen, you will consider of your verdict."

He then asked them whether they would take some refreshment before they left the bar,—when the foreman, in a tone which made the Chief Justice's countenance visibly collapse, said, "My Lord, we shall not be long." Accordingly, after going through the form of withdrawing and consulting together, they returned

and pronounced their verdict, to which they had long made up their minds, *NOT GUILTY*,—and thereupon all the other prisoners who were to have been tried on the same evidence were at once acquitted and liberated.*

In the following autumn Lord Ellenborough made a short tour on the Continent in the hope of re-establishing his health. He at first rallied from change of scene, but ere long unfavourable symptoms returned, and he seems to have had a serious foreboding that his earthly career was drawing to its close. A deep sense of religion had been instilled into his infant mind by his pious parents: this had never been obliterated; and now it proved his consolation and his support. While at Paris he composed the following beautiful prayer, which may be used by all who wish like him with a grateful heart to return thanks for the past bounties of Providence, and, looking forward, to express humble resignation to the Divine will.

“O God, heavenly Father, by whose providence and goodness all things were made and have their being, and from whom all the blessings and comforts of this life, and all the hopes and expectations of happiness hereafter, are, through the merits of our blessed Saviour, derived to us, Thy sinful creatures, I humbly offer up my most grateful thanks and acknowledgments for thy Divine goodness and protection, constantly vouchsafed to me through the whole course of my life, particularly in indulging to me such faculties of mind and body, and such means of health and strength, as have hitherto enabled me to obtain and to enjoy many great worldly comforts and advantages.

*His prayer
when his
health and
strength
were
declining.*

“Grant me, oh Lord, I humbly beseech Thee, a due sense of these Thy manifold blessings, together with a steadfast disposition and purpose to use them for the benefit of my fellow-creatures, and Thy honour and glory. And grant, oh Lord, that no decay or diminution of these faculties and means of

happiness may excite in my mind any dissatisfied or desponding thoughts or feelings, but that I may always place my firm trust and confidence in Thy Divine goodness ; and whether the blessings heretofore indulged to me shall be continued or cease, and whether Thou shalt give them or take them away, I may still, in humble obedience to Thy Divine will, submit myself in all things with patience and resignation to the dispensations of Thy Divine providence, humbly and gratefully blessing, praising, and magnifying Thy holy name for ever and ever. Amen.

“Paris, 1817.”

When Michaelmas Term returned he was able to take his seat in the Court of King's Bench, but he was frequently obliged to call in the assistance of the puisne judges to sit for him at *nisi prius*.

The trial of William Hone coming on at Guildhall, although there was a strong desire to convict him, for he had published very offensive pasquinades on George IV., the task of presiding was intrusted to Mr. Justice Abbott. The defendant was charged by three different informations with publishing three parodies, entitled ‘The late John Wilkes’s Catechism,’ ‘The Political Litany,’ and ‘The Sinecurist’s Creed.’ He was not at all supposed to be formidable, not being hitherto known as a demagogue ; but in truth he defended himself with extraordinary skill and tact, and at the end of the first day’s trial he obtained a verdict of acquittal amidst the shouts of the mob.

This being related to the enfeebled Chief Justice—his energy was revived, and he swore that at whatever cost he would preside in Court next day himself, so that conviction might be certain, and the insulted law might be vindicated. Accordingly he appeared in Court pale and hollow-visaged, but with a spirit unbroken, and more stern than when his strength was unimpaired. As he took his place on the bench, “I am glad to see you, my Lord Ellenborough,” shouted Hone ; “I know

what you are come here for ; I know what you want.” “I am come to do justice,” retorted the noble and learned Lord ; “my only wish is to see justice done.” “Is it not rather, my Lord,” said Hone, “to send a poor bookseller to rot in a dungeon?”

The subject of this day’s prosecution was ‘The Political Litany,’ and the course taken by the defendant, with great effect, was to read a vast collection of similar parodies composed by writers of high celebrity, from Swift to Canning. Some of these exciting loud laughter in the crowd, the indignant Judge sent for the Sheriffs to preserve order, and fined them for their negligence. In summing up to the jury he reminded them that they were sworn on the Holy Evangelists, and were bound to protect the ritual of our Church from profanation:—

“There are many things,” said he, “in the parodies you have heard read which must be considered profane and impious, although divines and statesmen may be the authors of them; but this parody of the defendant transcends them all in profanity and impiety. I will deliver to you my solemn opinion, as *I am required by Act of Parliament to do*; under the authority of that Act, and still more in obedience to my conscience and my God, I pronounce it to be a **MOST IMPIOUS AND PROFANE LIBEL**. Hoping and believing that you are Christians, I doubt not that your opinion is the same.”

The usual question being put when the jury after a short deliberation returned into Court,—the Chief Justice had the mortification to hear the words **NOR GUILTY** pronounced, followed by a tremendous burst of applause, which he could not even attempt to quell.

But he was still undismayed, and declared that he would proceed next day with the indictment on ‘The Sinecurist’s Creed.’ This was a most indiscreet resolution.

The whole of Hone’s third trial was a triumph, the jury plainly intimating their determination to find a

verdict in his favour. He read parallel parodies as on the preceding days, and at last came to one said to be written by Dr. Law, the late Bishop of Carlyle, the Judge's own father. *Lord Ellenborough* (in a broken voice): "Sir, for decency's sake forbear." Hone withdrew it, and gained more advantage by this tasteful courtesy than the parody could have brought him, had it been ever so apposite. After a similar summing up as on the preceding day, there was the like verdict, accompanied with still louder shouts of applause.

Bishop Turner, who was present at the trial, and accompanied the Chief Justice home in his carriage, related that all the way he laughed at the tumultuous mob who followed him, remarking that "he was afraid of their *saliva*, not of their *bite*;" and that passing Charing Cross he pulled the check-string, and said, "It just occurs to me that they sell the best red herrings at this shop of any in London; buy six." The popular opinion, however, was that Lord Ellenborough was killed by Hone's trial, and he certainly never held up his head in public after.

When the day again came round for the Judges to choose their Summer Circuits, he chose the Home, and appointed the days for holding the assizes at each place upon it; but at the time for his departure approached, his strength was unequal to the task, and he accepted the offer of LENS, a King's Serjeant, an excellent lawyer and an accomplished scholar (whom he greatly wished to have for his successor as Chief Justice), to go in his stead. On this occasion he wrote the following letter to his trusty clerk, who had served him faithfully many years:—

"St. James's Square, July 1, 1818.

"DEAR SMITH,

"Mr. Serjeant Lens seems to prefer taking his own carriage and a pair of horses, with a pair to be put before them

from his jobman, to having the use of my chariot, drivers, and horses which I offered him. John will attend him as circuit butler on a horse, with which I will provide him. You will attend to all things material to the Serjeant's convenient accommodation, and see that they be fully supplied in all respects. The Serjeant as going in my place will, I presume, sit at each place on the circuit on the Civil side or the Crown side, as I should have done myself, viz., on the Civil side at Hertford, and on the Crown side at Chelmsford. You can apply to me if any matter of doubt should occur—which, however, I do not expect. I am going out of town to Roehampton.

“Yours, &c.,

“ELLENBOROUGH.”

He afterwards took up his quarters at Worthing on the coast of Sussex, in hopes of benefit from the sea air. While there he wrote the following letters to his anxious clerk, who had a sincere regard for his kind master, besides holding an office worth 2000*l.* a-year on his master's life:—

“September 17th, 1818.

“DEAR SMITH,

“I think I am better, though but little, on my legs; and this fine weather gives me opportunity for beneficial exercise and exposure to the fresh air. Charles, who is with his family at Bognor, has been over to me here—as has Lushington from the same place. I shall be glad to see you when we are within distance of each other. Keep me properly apprised of your change of place from time to time, and believe me,

“Ever most sincerely,

“ELLENBOROUGH.”

“October 1st, 1818.

“DEAR SMITH,

“I leave this place for Brighton for a month on Saturday morning next. I have not gained much ground since I left town, and unless I make a progress which I do not expect, I shall not be able to look business in the face very soon. I am very lame in one of my legs from an erysipelas affection, which has settled there. I have likewise a troublesome cough, proceeding from the same cause. The Chief Justice of the Common Pleas* is here, and better, upon the whole, than I expected to

* Sir Vicary Gibbs, who was then dying.

find him. He is however, very weak in body, and can hardly sustain himself against any fatigue. I shall be glad to see you.

"Yours very sincerely,
"ELLENBOROUGH."

Before this he had found that all hope of returning to the discharge of his public duties must be renounced, and he had with firmness made up his mind to seek repose, that he might prepare for the awful day when he himself was to stand before the tribunal of an almighty, an omniscient, but merciful Judge.

The last stage of his judicial career has been thus graphically described:—

"Nature had exhibited evident symptoms of decay before his strenuous and ill-judged efforts on the trial of Hone; his frame had been shaken by violent attacks of gout, and during the Hilary and Easter Terms of 1818 his absence from Court became more frequent, and his calls on the Puisne Judges for assistance in the sittings after Term were often, though reluctantly, renewed. The fretfulness of his manner, and his irritable temperament, proved clearly the workings of disease when he occasionally reappeared in the submissive and silent hall, and the frequent interruptions of 'I will not recast the practice of the Court; I do not sit here as pædagogus to hear first principles argued. What are the issues? What can you mean by wandering thus wildly from the record? I will not tolerate such aberration; I cannot engender or inoculate my mind with a doubt; I will not endure this industry of coughing;' attested his impatient anxiety, and fast growing inability to sustain the toils of office. To the last he clung to his situation with adhesive grasp, and girded himself with a sort of desperate fidelity to perform its duties at a time when, as he wrote to a friend, 'he could scarcely totter to his seat, and could only take notes *manu lassissimâ et corpore imbecillo*.' During the calm of the recess he deluded his spirits with the hope that he might resume his duties once more. The physicians recommended Bath, but his failing strength rendered the journey hazardous; and just before Michaelmas Term commenced, tardily and with repining, he was compelled to announce to the Chancellor his inability to remain."*

Lord Ellen-
borough
resigns his
office."

* Townsend, vol. i. 389.

The following is his melancholy missive on this occasion :—

“Worthing, September 21, 1818.

“MY DEAR LORD,

“The decay of many of my faculties, particularly of my eyesight, which I have painfully experienced since the beginning of the present year, strongly admonishes me of the duty which I owe to the public and myself on that account ; and as I have now held the office of Chief Justice of the Court of King’s Bench for more than sixteen years, viz. from the 12th day of April, 1802, I am entitled, under the Acts of Parliament, to request, which I most humbly do, the permission of His Royal Highness the Prince Regent for leave to retire on the first day of next Term, upon that amount of pension which by those Acts of Parliament His Royal Highness the Prince Regent is authorized to grant to a Chief Justice of the King’s Bench retiring after a period of fifteen years’ service. If I had been able to depend upon my strength for the due and satisfactory execution of my most important office for a longer period, I should not now have tendered my resignation to His Royal Highness.”

The Chief Justice, without any servility, had always been a special favourite at Carlton House, and his proffered resignation drew forth the following graceful letter of condolence from the PRINCE REGENT :—

“MY DEAR LORD,

“I have only this moment been informed of your arrival in town, and I cannot suffer it to pass without conveying to you the heart-felt grief with which I received from the Chancellor a few days ago, his report of the melancholy necessity under which you have found yourself of tendering your resignation, and of your retiring from public life. As to my own private feelings upon this most sad occasion, I will not attempt their expression ; indeed that would be quite impossible—but as a public man I do not hesitate most distinctly to state, that it is the heaviest calamity, above all in our present circumstances, that could have befallen the country. My Lord, your career, since the moment you took your seat, and presided in the high court committed to your charge, can admit of but one sentiment, and but of one opinion ; it has been glorious to yourself, and most beneficial to the nation. You have afforded an example combining wisdom with every other talent and virtue which exalt your character, and place it beyond all praise. With these sentiments, and such

a picture before me, where can I hope to find, or where can I look for that individual who shall not leave a blank still in that great machine, of which you were the mainspring and brightest ornament? If, however, my dear friend, there can be consolation for us under such afflicting circumstances, that consolation is that you carry with you into your retirement the veneration, gratitude, and admiration of the good, and the unbounded love and affection of those who have had the happiness of associating more intimately with you in private life. I confess that the magnitude of the loss we are about to sustain presses so heavily upon me, that I have not the power of adding more than that my constant and most fervent wishes for your health, comfort, and happiness will ever attend you, and that I remain always,

“My dear Lord,

“Your most sincere and affectionate friend,

“GEORGE P. R.

“Carlton House, October 18th, 1818.”

On the 6th day of November the Chief Justice went through the trying ceremony of executing his deed of resignation which cost him a deeper pang than drawing his last breath. This world had now closed upon him, and before another opened there was a dreary interval, in which, reduced to insignificance, he had the dread of suffering severe pain as well as cold neglect.

His family had flattered themselves that, when relieved from the anxiety of business, to which he was inadequate, he would rally, and that he might long be spared to enliven and to comfort them; but the excitement of office being removed, he only sunk more rapidly.

Having ever been a firm believer in Christianity, he was now supported by a Christian's hope. In a short month after his resignation it was evident that his end was approaching, and having piously received the last

His death. consolations of religion, he calmly expired at his house in St. James's Square in the evening of Sunday, the 13th of December, 1818. On the 22nd of the same month his remains were interred in the cemetery of the Charter House, by the side of those of Mr. Sutton, its honoured founder. The funeral was

attended by all the dignitaries of the law and many distinguished men from other ranks of life, and its pomp was rendered more solemn by a dense fog, which only permitted to the eye a dim glimpse of the procession.*

On a tablet near the spot where his dust reposes, there is the following simple inscription to his memory:—

In the Founder's vault are deposited the remains of
EDWARD LAW, LORD ELLENBOROUGH,
son of EDMUND LAW, LORD BISHOP OF CARLISLE,
Chief Justice of the Court of King's Bench from April
1802 to November 1818,
and a Governor of the Charter-House.
He died December 13th, 1818, in the 69th year of his age;
and in grateful remembrance of
the advantages he had derived through life from his
Education
upon the Foundation of the Charter-House
desired to be buried in this Church.

* From the family of his clerk, Mr. Smith, I have in my possession the originals of the two following letters, which I cannot refrain from copying, as they seem to me very creditable to all who are mentioned in them. They particularly show the subject of this memoir in a most amiable point of view, and prove that if at times he was regardless of giving pain to his equals, he must have been uniformly kind to dependents:

"Lofty and sour to them that loved him not;

But to those men who sought him,
sweet as summer."

The first, announcing Lord Ellenborough's death to Mr. Smith, is from the Honourable Charles Law, his second son, and the other, inviting Mr. Smith to the funeral, is from the present Earl of Ellenborough:—

"Southampton Row, 8 o'clock.

"MY DEAR FRIEND,

"It has become my melancholy duty to announce to you the death of my beloved parent. He breathed his last about six o'clock, without a sigh and without a struggle. If you could

call on me this evening, it would much oblige me.

"Yours, very sincerely and faithfully,

"CHAS. E. LAW."

"St. James's Square, Dec. 18, 1818.

"MY DEAR SIR,

"I am sure the long and intimate connection you had with my father, and the regard you naturally entertained for him, would make you desirous of joining his family in the performance of the last duties to his memory; and I am equally sure, from my knowledge of the gratitude my father felt for your very useful and faithful services, and of the esteem in which he held your character, that it would have been gratifying to him to think that his remains would be attended to the grave by you. Allow me, therefore, to request that you will proceed with us from this house on Tuesday morning before half-past seven.
"Very truly and faithfully yours,
"E.

"I have great pleasure in communicating to you that my late respected father has, in testimony of your long and most faithful services, bequeathed to you the watch and gold chain he usually wore, and a small sum for the purchase of some memorial of him."

His character has been thus drawn by one who knew him well :—

“ He was not a man of ambition ; he had still less of vanity
 His character. He received with satisfaction certainly, but without
 the smallest excitement, the appointment of Attorney-
 General, the Chief Justiceship, and the Peerage. I never knew
 any man, except the Duke of Wellington, who was so innately
 just. He thoroughly loved justice—strict justice, perhaps, but
 still justice. He was also thoroughly devoted to the performance
 of his duty. I have heard him say that no private consideration
 could absolve a man from the execution of public duty—
 that should the person dearest to him in the world die, he would
 go into court next day, if physically capable of doing so. When
 he took as his motto *compositum jus fasque animi*, he stamped
 his own character upon his shield.”

Of Lord Ellenborough as a Judge little remains to be said. Notwithstanding his defects, which were not small, it must be admitted that he filled his high office most creditably. He had an ascendancy with his brethren, with the bar, and with the public, which none of his successors have obtained, and since his death his reputation has in no degree declined.* His bad temper and inclination to arrogance are forgotten, while men bear in willing recollection his unspotted integrity, his sound learning, his vigorous intellect, and his manly intrepidity in the discharge of his duty.

As a legislator his fame depends upon the Act (Lord
 Ellenborough's Act, 43 Geo. III. c. 58) which
 goes by his name, the only one he ever intro-
 duced into parliament,—by which ten new
 capital felonies were created, and the revolting severity
 of our criminal code was scandalously aggravated. Some

Lord Ellen-
 borough's
 Act.

* The unenviable awe which he inspired into his brother Judges may be imagined from the following statement of Lord Brougham: “ I remember being told by a learned Serjeant, that at the table of Serjeants' Inn, where the Judges met their brethren of the coil to dine,

the etiquette was in those days never to say a word after the Chief Justice, nor ever to begin any topic of conversation. He was treated with more than the obsequious deference shown at Court to the Sovereign himself.”

of these, which before were only misdemeanors, might without impropriety have been made clergyable felonies, punishable with long imprisonment or transportation ; but punishing them with death raised a cry against capital punishment, even in cases of murder, where it is prompted by nature, sanctioned by religion, and necessary for the security of mankind. However, Lord Ellenborough, with many of his contemporaries, thought that the criminal code could not be too severe. He strenuously opposed all the efforts of Sir Samuel Romilly in the cause of humanity, and was as much shocked by a proposal to repeal the punishment of death for stealing to the value of five shillings in a shop, as if it had been to abrogate the Ten Commandments :—

“ I trust,” said he, “ your Lordships will pause before you assent to a measure pregnant with danger to the security of property, and before you repeal a statute which has been so long held necessary for public security, and which I am not conscious has produced the smallest injury to the merciful administration of justice. After all that has been stated in favour of this speculative humanity, it must be admitted that the law as it stands is but seldom carried into execution, and yet it ceases not to hold out that terror, which alone will be sufficient to prevent the frequent commission of the offence. It has been urged by persons speculating in modern legislation, that a certainty of punishment is preferable to severity—that it should invariably be proportioned to the magnitude of the crime, thereby forming a known scale of punishments commensurate with the degree of offence. Whatever may be my opinion of the theory of this doctrine, I am convinced of its absurdity in practice. . . . Retaining the terror, and leaving the execution uncertain and dependent on circumstances which may aggravate or mitigate the enormity of the crime, does not prove the severity of any criminal law ; whereas to remove that salutary dread of punishment would produce injury to the criminal, and break down the barrier which prevents the frequent commission of crime. The learned judges are *unanimously agreed* that the expediency of justice and the public security require there should not be a remission of capital punishment in this part of the criminal law. My Lords, if we suffer this bill to pass, we shall not know where to stand—we shall not

His approval
of a severe
penal code.

know whether we are on our heads or on our feet. If you repeal the Act which inflicts the penalty of death for stealing to the value of five shillings in a shop, you will be called upon next year to repeal a law which prescribes the penalty of death for stealing five shillings in a dwelling house, there being no person therein—a law, your Lordships must know, on the severity of which, and the application of it, stands the security of every poor cottager who goes out to his daily labour. He, my Lords, can leave no one behind to watch his little dwelling and preserve it from the attacks of lawless plunderers; confident in the protection of the laws of the land, he cheerfully pursues his daily labours, trusting that on his return he shall find all his property safe and unmolested. Repeal this law, and see the contrast: no man can trust himself for an hour out of doors without the most alarming apprehensions that on his return every vestige of his property will be swept away by the hardened robber. My Lords, painful as is the duty—anxious as the feelings of a Judge are—unwilling as he is to inflict the tremendous penalties of the law—there are cases where mercy and humanity to the few would be injustice and cruelty to the many. There are cases where the law must be applied in all its terrors. *My Lords, I think this, above all others, is a law on which so much of the security of mankind depends in its execution, that I should deem myself neglectful of my duty to the public if I failed to let the law take its course.*"

The Chief Justice scoffed "at that speculative and modern philosophy which would overturn the laws that a century had proved to be necessary—on the illusory opinions of speculatists."

"I implore you," he said, in one of his latest addresses to the Lords, "not to take away the only security the honest and industrious have against the outrages of vice and the licentiousness of dishonesty. There is a dangerous spirit of innovation abroad on this subject, but against which I have ever been, and always shall be, a steady opposer. I seek no praise—I want no popular applause; all I wish is, that the world may esteem me as a man who will not sacrifice one iota of his duty for the sake of public opinion. My Lords, I shall never shrink from the fulfilment of the most arduous task from fear of popular prejudice."

The degree to which Lord Ellenborough's powerful mind was perverted by early prejudice may be seen

from the following entry in the Diary of Sir Samuel Romilly :—

“ Lord Lauderdale told me that soon after my pamphlet appeared, in 1810, he had some conversation about it with Ellenborough, who told him, that though the instances were very rare, yet it sometimes became necessary to execute the law against privately stealing in shops, and that he had himself left a man for execution at Worcester for that offence. The man had, he said, when he came to the bar, lolled out his tongue and acted the part of an idiot; that he saw the prisoner was counterfeiting idiocy, and bade him be on his guard; that the man, however, still went on in the same way; whereupon Lord Ellenborough, having put it to the jury to say whether the prisoner was really of weak mind, and they having found that he was not, and having convicted him, left him for execution. Upon which Lord Lauderdale asked the Chief Justice what law there was which punished with death the counterfeiting idiocy in a court of justice; and told him that he thought his story was a stronger illustration of my doctrines than any of the instances which I had mentioned.”

Lord Ellenborough was equally opposed to every improvement in the law of Debtor and Creditor, and prophesied the utter ruin of commercial credit and the subversion of the empire if the invaluable right of arresting on mesne process should ever be taken away, or the fatal principle of *cessio bonorum* should ever be recognised in this country, so as that an honest insolvent might be entitled to be discharged out of prison on yielding up the whole of his property to his creditors.*

I may perhaps feel some little pride in beholding England, after the passing of bills, which I had the honour to introduce into parliament, to take away “the invaluable right,” and to establish “the fatal principle,”—more wealthy and more prosperous than she ever was before.

Lord Ellenborough had seen very little of foreign

* 19 Parl. Deb. 1169-1172; 20 Parl. Deb. 221, 606-7.

countries, and was rather intolerant of what he considered un-English. While in Paris, he went to attend a criminal trial at the Cour d'Assises, but when the interrogatory of the prisoner began, he made off, saying that it was contrary to the first principles of justice to call upon the accused to criminate himself. He saw still stronger reason to be disgusted with their civil procedure. He had hired a carriage by the day, with a coachman, from the *remise*. On one of the *'quais* the coachman, by furious driving, wilfully damaged some crockery-ware exposed to sale by an old woman. She screamed; a *sergent de ville* came up, the carriage was stopped, and Milord Anglais was called upon to pay a large sum of money by way of *amende*. He denied his liability, and insisted that, according to the doctrine of *Macmanus v. Cricket*, 1 East, 106, the only remedy was against the coachman himself, or against the keeper of the *remise*; but he was cast, and had to pay damages and costs.

The Chief Justice deserves great credit for the exercise of his influence in the appointment of puisne Judges. Lord Chancellor Eldon was in the habit of consulting him on this subject, and of being guided by his advice. Free from all petty jealousy, he chose for his colleagues Bayley, Dampierre, Holroyd, and Abbott.*

He never appeared before the world as an author, and, from the want of attention to English composition which prevails at English seminaries, he was signally unskilful in it. In his written judgments, as they appear in the law reports, he betrays an utter disregard of *rhythm*, and his hereditary love of *parenthesis* is constantly breaking out.†

* I have had the opportunity of reading the letters between Lord Eldon and Lord Ellenborough about the appointment of Judges; but such correspondence ought to remain for ever "secret and confidential."

† It is related of his father, the Bishop of Carlisle, that in passing a work through the press, the proof-sheets, which were promised to be sent regularly, soon stopped, and that going to the printing-office to remonstrate, the *Devil*

It was in sarcastic effusions from the bench, and in jocular quips when mixing in society on equal terms with his companions, that he acquired his most brilliant renown. Westminster Hall used to abound with his *facetie*, and some of them (perhaps not the best) are still cited.

A young counsel who had the reputation of being a very impudent fellow, but whose memory ^{His facetie.} failed him when beginning to recite a long speech which he had prepared, having come uttered these words—"The *unfortunate client* who appears by me—the *unfortunate client* who appears by me—My Lord, my *unfortunate client*"—the Chief Justice interposed, and almost whispered in a soft and encouraging tone—"You may go on, Sir—so far the Court is quite with you."

Mr. Preston, the famous conveyancer, who boasted that he had answered 50,000 cases, and drawn deeds which would go round the globe, if not sufficient to cover the whole of its surface, having come special from the Court of Chancery to the King's Bench to argue a case on the construction of a will, assumed that the Judges whom he addressed were ignorant of the first principles of real property, and thus began his erudite harangue—"An estate in *fee simple*, my Lords, is the highest estate known to the law of England." "Stay, stay," said the Chief Justice, with consummate gravity, "let me take that down." He wrote and read slowly and emphatically, "An estate—in fee simple—is—the highest estate—known to—the law of England:" adding, "Sir, the Court is much indebted to you for the information."* There was only one person present

said to him, "Please you, my Lord, your Lordship's MS. has already used up all our parentheses, but we have sent to the letter founder's for a ton

extra, which we expect to be sent in next week."

* Chief Justice Gibbs once told me this anecdote of Serjeant Vaughan, who,

who did not perceive the irony. That person having not yet exhausted the Year Books, when the shades of evening were closing upon him, applied to know when it would be *their Lordships' pleasure* to hear the remainder of his argument? *Lord Ellenborough*.—"Mr. Preston, we are bound to hear you out, and I hope we shall do so on Friday—but, alas! pleasure has been long out of the question."

Another tiresome conveyancer having, towards the end of Easter Term, occupied the Court a whole day about the *merger of a term*, the Chief Justice said to him, "I am afraid, Sir, the TERM, although a long one, will *merge* in your argument."

James Allan Park, who had the character of being very sanctimonious, having in a trumpery cause affected great solemnity, and said several times in addressing the Jury, "I call Heaven to witness—as God is my Judge," &c.—at last Lord Ellenborough burst out—"Sir, I cannot allow the law to be thus violated in open Court. I must proceed to fine you for profane swearing—five shillings an oath." The learned counsel, whose risibility was always excited by the jokes of a Chief Justice, is said to have joined in the laugh created by this pleasantry.

Mr. Caldecot, a great Sessions lawyer, but known as

although a popular advocate and afterwards made a Judge, was utterly ignorant of the rudiments of the law of real property, and terribly alarmed lest he should commit some absurd blunder. "He was arguing a real property case before me, of which he knew no more than the usher, and he laid down Preston's proposition that 'an estate in fee simple is the highest estate known to the law of England.' I, wishing to frighten him, pretended to start, and said, 'What is your proposition, brother Vaushan?' when, thinking he was quite wrong and wishing to get out of the

scrape, he observed, 'My Lord, I mean to contend that an estate in fee simple is *one of* the highest estates known to the law of England—that is, my Lord, that it may be under certain circumstances—and sometimes is so.'" But the learned Serjeant had good qualities, which rendered him very popular,—although when he was promoted to the Bench by the interest of his brother Sir Henry Halford, physician to George IV., it was said by the wags that he had a better title than any of his brethren, being a Judge *by prescription*.

a dreadful bore, was arguing a question upon the rateability of certain lime quarries to the relief of the poor, and contended at enormous length that, "like lead and copper mines, they were not rateable, because the lime-stone in them could only be reached by deep boring, which was matter of science." *Lord Ellenborough, C. J.*—"You will hardly succeed in convincing us, Sir, that every species of boring is '*matter of science*.'"

A declamatory speaker (Randle Jackson, counsel for the E. I. Company), who despised all technicalities, and tried to storm the Court by the force of eloquence, was once, when uttering these words, "In the book of nature, my Lords, it is written"—stopped by this question from the Chief Justice, "Will you have the goodness to mention the page, Sir, if you please?"

A question arose, whether, upon the true construction of certain tax acts, *mourning coaches* attending a funeral were subject to the post-horse duty? Mr. Gaselee, the counsel for the defendant, generally considered a dry special pleader, aiming for once at eloquence and pathos, observed—"My Lords, it never could have been the intention of a Christian legislature to aggravate the grief felt by us in following to the grave the remains of our dearest relatives, by likewise imposing upon us the payment of the post-horse duty." *Lord Ellenborough, C. J.*—"Mr. Gaselee, may there not be some danger in sailing up into these high sentimental latitudes?"

A very doubtful *nisi prius* decision being cited before him, he asked, "Who ruled that?" Being answered "The Chief Justice of the Isle of Ely"—he replied—"Cite to me the decisions of the Judges of the land—not of the Chief Justice of the Isle of Ely"—adding in a stage whisper, "who is only fit to rule—a copy-book."*

* This was Christian, a far-away cousin of Lord Ellenborough.

A Quaker coming into the witness-box at Guildhall without a broad brim or dittoes, and rather smartly dressed, the crier put the book into his hand and was about to administer the oath, when he required to be examined on his *affirmation*. Lord Ellenborough asking if he was really a Quaker, and being answered in the affirmative, exclaimed, "Do you really mean to impose upon the Court by appearing here in the disguise of a reasonable being?"

A witness dressed in a fantastical manner having given very rambling and discreditable evidence, was asked in cross-examination, "What he was?" *Witness*.—"I employ myself as a surgeon." *Lord Ellenborough, C. J.*—"But does any one else employ you as a surgeon?"

A volunteer corps of Westminster shopkeepers, while exercising in Tothill Fields, being overtaken by a violent storm of wind and rain, took shelter in Westminster Hall, while he was presiding in the adjoining Court of King's Bench. *Lord Ellenborough, C. J.*—"Usher, what is the meaning of that disturbance?" *Usher*.—"My Lord, it is a volunteer regiment *exercising*, your Lordship." *Lord Ellenborough, C. J.*—"Exercising! We will see who is best at that. Go, Sir, to the regiment, and inform it, that if it depart not instantly I will commit it to the custody of a tipstaff." The noble and learned Lord seems to have forgotten his own military enthusiasm when he exercised in the awkward squad of the "DEVIL'S OWN."

At a Cabinet dinner of "All the Talents" Lord — being absent, and some one observing that he was seriously ill, and like to die: "Die!" said Lord Ellenborough—"why should he die? What would he *get* by that?"

Henry Hunt, the famous demagogue, having been brought up to receive sentence upon a conviction for holding a seditious meeting, began his address in miti-

gation of punishment, by complaining of certain persons who had accused him of "stirring up the people by *dangerous eloquence*." *Lord Ellenborough, C. J.* (in a very mild tone).—"My impartiality as a Judge calls upon me to say, Sir, that in accusing you of that they do you great injustice."

The following dialogue between the same Chief Justice and the same demagogue we have on the authority of Mr. Justice Talfourd, who was present at it:—

"Lord Ellenborough had come down after an interval, during which his substitutes had made slow progress, and was rushing through the list like a rhinoceros through a sugar plantation, or a Common Serjeant in the evening through a paper of small larcenies; but just as he had non-suited the plaintiff in the twenty-second cause, which the plaintiff's attorney had thought safe till the end of a week, and was about to retire to his turtle, with the conviction of having done a very good morning's work, an undeniable voice exclaimed, 'My Lord!' and Mr. Hunt was seen on the floor with his peculiar air—perplexed between that of a bully and a martyr. The Bar stood aghast at his presumption; the usher's wands trembled in their hands; and the reporters, who were retiring after a very long day, during which, though some few City firms had been crushed into bankruptcy, and some few hearts broken by the results of the causes, they could honestly describe as 'affording nothing of the slightest interest except to the parties,' rushed back and seized their notebooks to catch any word of that variety of rubbish which is of 'public interest.' My Lord paused and looked thunders, but spoke none. 'I am here, my Lord, on the part of the boy Dogood,' proceeded the undaunted Quixote. His Lordship cast a moment's glance on the printed list, and quietly said, 'Mr. Hunt, I see no name of any boy Dogood in the paper of causes,' and turned towards the door of his room. 'My Lord!' vociferated the orator, 'am I to have no redress for an unfortunate youth? I thought your Lordship was sitting for the redress of injuries in a court of justice.'—'O no, Mr. Hunt,' still calmly responded the judge.—'I am sitting at nisi prius; and I have no right to redress any injuries, except those which may be brought before the jury and me, in the causes appointed for trial.'—'My Lord,' then said Mr. Hunt, somewhat subdued by the unexpected amenity of the Judge, 'I only desire to protest.'—'Oh, is that

all?' said Lord Ellenborough: 'by all means protest, and go about your business!' So Mr. Hunt protested and went about his business; and my Lord went unruffled to his dinner, and both parties were content."*

While the old Lord Darnley, against whom Lord Ellenborough had a special spite, was making a tiresome speech in the House of Lords, he rose up and said, with that quaint and dry humour which rarely suffered his own muscles to relax, but loud enough to be heard by three-fourths of the Peers present, "I am answerable to God for my time, and what account can I give at the day of judgment if I stay here any longer?"

A very tedious Bishop having yawned during his own speech, Lord Ellenborough exclaimed, "Come, come, the fellow shows some symptoms of taste, but this is encroaching on our province."

Of Michael Angelo Taylor, who, though very short of stature, was well knit, and thought himself *a very great man*—Lord Ellenborough said, "his father, the sculptor, had fashioned him for a *pocket Hercules*."

At the coming in of "The TALENTS" in 1806, Erskine himself pressed the Great Seal upon Ellenborough, saying that he would add to the splendour of his reputation as Lord Chancellor." Ellenborough, knowing that on his own refusal Erskine was to be the man, exclaimed, "How can you ask me to accept the office of Lord Chancellor when I know as little of its duties as you do?"†

Being told that the undertaker had made a foolish mistake in the hatchment put up on Lord Kenyon's house after the death of that frugal Chief Justice, MORRIS JANUA VITA, his successor exclaimed, "No mistake at all, Sir—there is no mistake—it was by particular

* Talfourd's 'Vacation rambles.'

† *Ex relatione* the present Earl of Ellenborough.

directions of the deceased in his will—it saved the expense of a diphthong!”

From these sayings it might be thought that he was uniformly cynical and even acrimonious, but he spoke rather from a love of fun than from any malignity, and he had in him a large stock of good humour and *bonhomie*, which, producing little epigrammatic point, is in danger of being forgotten. He was an extremely agreeable companion. “The pungency of his wit,” said an old-class fellow, “his broad, odd, sometimes grotesque jokes, his hearty merriment, which he seemed to enjoy, rather by a quaint look and indescribable manner than by any audible laughing, altogether formed a most lively and delightful person, whether to hear or see.”

In domestic life Lord Ellenborough was exceedingly amiable, though on rare occasions a little hasty. It was reported that Lady Ellen-
Lord Ellenborough in domestic life.
borough, by doing what all ladies then considered very innocent, trying to smuggle some lace, caused the family coach to be seized as forfeited, and that he calmly said, “We have only to pay the penalty.” But if Rogers is to be believed, he did not show such equanimity when he thought that a bandbox had been improperly put into the carriage by her Ladyship. The author of the ‘Pleasures of Memory’ used often to relate the following anecdote:

“Lord Ellenborough was once about to go on the circuit, when Lady Ellenborough said that she should like to accompany him. He replied that he had no objection, provided she did not encumber the carriage with bandboxes, which were his utter abhorrence. During the first day’s journey, Lord Ellenborough, happening to stretch his legs, struck his foot against something below the seat. He discovered that it was a bandbox. Up went the window and out went the bandbox. The coachman stopped, and the footmen, thinking that the bandbox had tumbled out of the window by some extraordinary chance, were going to

pick it up, when Lord Ellenborough furiously called out, 'Drive on!' The bandbox accordingly was left by the ditch-side. Having reached the county-town where he was to officiate as Judge, Lord Ellenborough proceeded to array himself for his appearance in the Court-house. 'Now,' said he, 'where's my wig—where is my wig?' 'My Lord,' replied his attendant, 'it was thrown out of the carriage window.'**

Lord Ellenborough was above the middle size, and sinewy, but his figure was ungainly, and his walk singularly awkward. He moved with a sort of semi-rotatory step, and his path to the place to which he wished to go was the section of a parabola. When he entered the court he was in the habit of swelling out his cheeks by blowing and compressing his lips, and you would have supposed that he was going to snort like a war-horse preparing for battle. His spoken diction, although always scholar-like, rather inclined to the sesquipedalian; his intonation was deep and solemn,—and certain words he continued through life to pronounce in the fashion he had learnt from his Cumbrian nurse. These peculiarities, which were of course well known to the public, made him a favourite subject for mimicry. Charles Mathews, the celebrated comedian, who had unrivalled felicity of execution in this line,—to the infinite delight of a crowded theatre, brought the Lord Chief Justice on the stage in the farce of LOVE, LAW, AND PHYSIC. His Lordship did not appear as one of the *Dramatis Personæ*, but *Flexible*, the Barrister (personated by Mathews), in giving an account of a trial in which he had been counsel, having very successfully taken off Erskine and Garrow,—when he came to the summing up, in look, gesture, language, tone, and accent, so admirably represented the Lord Chief Justice of the King's Bench, that the audience, really believing they

His figure
and manner.

Imitation
of the Chief
Justice by
Charles
Mathews
the come-
dian.

* Table Talk of Samuel Rogers, p. 197.

were in the presence of the venerable Judge, remained in deep and reverential silence till he had concluded, and then after many rounds of applause made him give the charge three times over. Mrs. Mathews, in her entertaining 'Memoirs of her Husband,' says, "When he came to the Judge's summing up, the effect was quite astounding to him, for he had no idea of its being so received. The shout of recognition and enjoyment indeed was so alarming to his nerves, so unlike all former receptions of such efforts, that he repented the attempt in proportion as it was well taken, and a call for it a second time fairly upset him, albeit not unused to loud applause and approbation." The Lord Chief Justice was exceedingly shocked to find all the papers next morning filled with comments on his charge in the famous case of *Litigant v. Camphor*, and in a fury he wrote to the Lord Chamberlain, requiring his interposition, and observing, that since the 'Clouds of Aristophanes,' in which Socrates was ridiculed, there had not been such an outrage on public decency. The Lord Chamberlain appears immediately to have effected his object, in a private audience with Mathews, by a courteous representation, without even a hint of authoritative proceedings. According to Mrs. Mathews, "his Lordship was soon satisfied that he had no occasion to use any argument to influence the performer, for Mr. Mathews proved to him at once that he had fully resolved, from the moment he found his imitation received with such extraordinary vehemence, not to repeat it." Notwithstanding urgent and vociferous requests and complaints of the audience at subsequent representations of *LOVE, LAW, AND PHYSIC*, the Judge's charge was heard no more in public. But soon afterwards Mathews received an invitation from the Prince Regent to Carlton House, and in the course of the evening H.R.H. began to speak of the extraordinary sensation caused by *Flexible's*

recent imitation, adding that he would have given the world to have been present. Mathews well understood the royal hint, but was much embarrassed, for, glancing his eye round, it fell upon the Lord Chamberlain, who was looking particularly grave. The Prince observing Mathews's hesitation, said, "Oh don't be afraid; we're all *tiled* here. Come, pray oblige me. I'm something of a mimic myself. My brother here (turning to the Duke of York) can tell you that my Chancellor Thurlow is very tolerable, only that I do not like to swear up to the mark. It was not so well that you should produce Chief Justice Ellenborough on the public stage, but here you need have no scruples." "The Prince was in raptures," says Mrs. Mathews, "and declared himself astonished at the closeness of the imitation, shutting his eyes while he listened to it with excessive enjoyment, and many exclamations of wonder and delight, such as *Excellent! Perfect! It is he himself!* The Duke of York manifested his approval by peals of laughter, and the Princes afterwards conversed most kindly and agreeably on the subject with my husband and high personages present."

Posterity may have a favourable and correct notion of Lord Chief Justice Ellenborough, from a His portrait by Lawrence. portrait of him by Sir Thomas Lawrence, in his judicial robes, which, covering his awkward limbs, represents a striking likeness of him, and yet makes him appear dignified by portraying his broad and commanding forehead, his projecting eyebrows, dark and shaggy, his stern black eye, and the deep lines of thought which marked his countenance.

He lived in a handsome style, suitable to his station and the splendid emoluments which then belonging to the Chief Justiceship of the King's Bench. His style of living. At first these did not exceed 8000*l.* a year, but on the death of Mr. Way, appointed by Lord

Mansfield, the great office of Chief Clerk of the Court of King's Bench fell in, which formed a noble provision for him and his family.* Soon after he was made Chief Justice he left Bloomsbury Square for a magnificent house in St. James's Square. To give an idea of its size to an old lawyer who lived in Chancery Lane, and to whom he was describing it, he said, "Sir, if you let off a piece of ordnance in the hall, the report is not heard in the bed rooms."† He likewise bought a beautiful villa at Roehampton, which might almost rival Lord Mansfield's at Caen Wood. Nevertheless from fees and offices the profits of which he was entitled to turn to his own use, he left above 240,000*l.* to his family, besides the office of Chief Clerk of the King's Bench, commuted to his son for 7000*l.* a year during life.

Five sons and five daughters survived him. He bequeathed 2000*l.* a-year to his widow, and ^{His} 15,000*l.* to each of his younger children. The ^{children.} eldest, to whom the residue and the great office fell, is the present Earl of Ellenborough, one of the most distinguished statesmen of the nineteenth century,—who, by his eloquence and his administrative powers, has added fresh splendour to the name which he bears.

Charles, the second son, having risen by his own merit to be Recorder of London, and Member of Parliament for the University of Cambridge, died at an early age.

I have great pleasure in concluding this Memoir of Lord Chief Justice Ellenborough with a few artless but sweet and affecting lines from a Monody on his death, written by his favourite daughter ELIZABETH,—then

* It is said that he heard of Way's death while he was riding in Hyde Park, and that he immediately dismounted at a house in Knightsbridge and executed a deed, filling up the office, lest he should die before appointing to it.

† This was the first instance of a

common law Judge moving to the "West End." Hitherto all the common law Judges had lived within a radius of half a mile from Lincoln's Inn; but now they are spread over the Regent's Park, Hyde Park Gardens, and Kensington Gore.

a little girl in the school-room,—afterwards the LADY COLCHESTER :

“ Ye who have mourn’d o’er life’s departing breath,
And view’d the sad and solemn scene of death,
Whilst hanging still o’er him whose soul is fled,
Have ye not felt the awful, silent dread,
Which strikes the soul as we in vain deplore
His loss, whose presence ne’er can cheer us more !
Those eyes are closed, whose fond approving glance
Could once the bliss of each gay joy enhance ;
Those lips are seal’d—where truth for ever reign’d,
Where wisdom dwelt, and piety unfeign’d !

* * * * *
Such was the father whom we now bewail,
But what can tears or poignant grief avail ?
Can they recall him to this earth again ?
False, flatt’ring hope ! ah ! wherefore art thou vain ?

* * * * *
Rais’d above earth and ev’ry earth-born care,
For Heav’n’s eternal joys our souls prepare,
Till ev’ry feeling, taught on high to soar,
Our hearts shall taste of bliss unknown before.

“ *St. James’s Square, Dec. 1818.* ”

CHAPTER LII.

LIFE OF LORD TENTERDEN, FROM HIS BIRTH TILL HIS
ELEVATION TO THE BENCH.

THE subject of this memoir seems to offer an unpromising task to the biographer. Lord Tenterden was of very obscure origin; scarcely an anecdote remains of his schoolboy days; his university career, though highly creditable, was not marked by any extraordinary incidents; while at the bar he was more distinguished by labour than brilliancy; he did not even attain the easy honour of a silk gown; till raised to the Bench he never held any office more distinguished than that of "Devil to the Attorney-General;" he neither was, nor wished to be, a member of the House of Commons; when made a puisne Judge he was believed to have reached the summit of his ambition; afterwards unexpectedly placed in the House of Lords, his few speeches there were distinguished for flatness or absurdity; he was dull in private life as well as in public; and neither crimes nor follies could ever be imputed to him. Yet is his career most instructive, and by a writer who does not depend upon wonder-stirring vicissitudes, it might be made most interesting. The scrubby little boy who ran after his father, carrying for him a pewter basin, a case of razors and a hairpowder bag, through the streets of Canterbury, became Chief Justice of England, was installed among the Peers of the United Kingdom, attended by the whole profession of the law, proud of him as their leader; and when the names of orators and

Disadvantages and advantages in the task of writing this Memoir.

statesmen illustrious in their day have perished with their frothy declamations, Lord Tenterden will be respected as a great magistrate, and his judgments will be studied and admired.

Although there be something exciting to ridicule in the manipulations of barbers,—according both to works of fiction and to the experience of life, there is no trade which furnishes such striking examples of ready wit, of entertaining information, and of agreeable manners.* This superiority of barbers may have at first arisen from their combination of bleeding and bone-setting with shaving and haircutting—but since they ceased to act as surgeons it can only be accounted for by their being admitted to familiar intercourse with their customers in higher station, whom they daily visit,—and by the barber's shop being the grand emporium for the circulation of news and scandal.

At the corner of a narrow street, opposite to the stately western portal of the Cathedral of Canterbury, stood a small house, presenting in front of it a long pole, painted of several colours,—with blocks in the window, some covered with wigs and some naked,—a sign over the door bearing the words “ABBOTT, HAIRDRESSER,” and on the sides of the door “Shave for a penny—hair cut for

Lord Tenterden's father and mother.

* One of the most intimate friends I have ever had in the world was Dick Danby, who kept a hairdresser's shop under the Cloisters in the Inner Temple. I first made his acquaintance from his assisting me, when a student at law, to engage a set of chambers; he afterwards cut my hair, made my bar wigs, and assisted me at all times with his valuable advice. He was on the same good terms with most of my forensic contemporaries. Thus he became master of all the news of the profession; and he could tell who were getting on and who were without a brief,—who succeeded by their

talents and who hugged the attorneys,—who were desirous of becoming puisne judges and who meant to try their fortune in parliament,—which of the Chiefs was in a falling state of health, and who was next to be promoted to the collar of SS. Poor fellow! he died suddenly, and his death threw a universal gloom over Westminster Hall,—unrelieved by the thought that the survivors who mourned him might pick up some of his business,—a consolation which wonderfully softens the grief felt for the loss of a favourite *nis prius* leader.

twopence, and fashionably dressed on reasonable terms." This shop was kept by a very decent, well-behaved man, much respected in his neighbourhood,—who had the honour to trim the whole Chapter and to cauliflower their wigs as they were successively in residence,—and who boasted that he had thrice prepared his Grace the Archbishop for his triennial charge to the clergy of the diocese. But he was not the pert, garrulous bustling character which novelists who introduce heroes of the razor and scissors love to portray. He was depicted by one who had known him well for many years as a "a tall, erect, primitive-looking man, with a large pig-tail, which latterly assumed the aspect of a heavy brass knocker of a door."* From his clerical connection he had a profound veneration for the Church, which we shall see was inherited by his offspring. His wife, in her humble sphere, was equally to be praised, and, without neglecting her household affairs, she was seldom absent from the early service of the Cathedral.

Struggling with poverty, their virtues were rewarded with a son, who thus modestly recorded their merits on his tomb,

"Patre vero prudenti, matre piâ ortus."

This was Charles, their youngest child, the future Chief Justice of England, who was born
on the 7th of October, 1762.

A.D. 1762.
Birth of
Lord Ten-
terden.

His infancy offered no omens or indications of his future eminence. Though always steady and well-behaved, he was long considered a very dull lad, and it is said that his father, who intended that he should succeed him as a barber, used to express apprehensions lest he should be obliged to put the boy to another trade requiring less genius. Having

* 'Gentleman's Magazine.'

learned to read at a dame's school, little Charley used to be employed in carrying home the wigs that had been properly frizzed and pomatumed, and he would accompany his father on the morning rounds to be made in the Cathedral close and in other parts of the city. We have transmitted to us a graphic description of the old gentleman "going about with the instruments of his business under his arms, and attended frequently by his son Charles, a youth as decent, grave, and primitive-looking as himself."*

But the youth's obscure destiny, which seemed inevitable, was suddenly changed to one highly intellectual, and he became nearly the finest classical scholar and the very best lawyer of his generation in England.

Lord Ten-
terden at
Canterbury
school.

This he owed to his admission on the foundation of the King's School, connected with Canterbury Cathedral, which had been founded by Henry VIII. and was then taught by Dr. Osmund Beauvoir, who was not only a very learned man but an admirable teacher, and eager to discover and to encourage talent in the boys under his care, whether of high or of humble degree. Young Abbott, notwithstanding his demureness, was soon found out by this discriminating master, and as great pains were bestowed upon him as if he had been the son of a Duke or an Archbishop. We have interesting portraits of him in his boyhood by two of his schoolfellows. Says Sir Egerton Brydges, who pretended to be a descendant of the Plantagenets, of the Tudors, and of Charlemagne:—

"From his earliest years he was industrious, apprehensive, regular and correct in all his conduct—even in his temper, and prudent in everything. I became acquainted with him in July, 1775, when I was removed from Maidstone to Canterbury

* 'Gentleman's Magazine.'

school. I was about six or seven weeks his junior in age, and was placed in the same class with him, in which, after a short struggle, I won the next place to him, and kept it till I quitted school for Cambridge in autumn, 1780, in my eighteenth year. Though we were in some degree competitors, our friendship was never broken or cooled. He always exceeded me in accuracy, steadiness, and equality of labour, while I was more fitful, flighty and enthusiastic. He knew the rules of grammar better, and was more sure in any examination or task. He wrote Latin verses and prose themes with more correctness, while I was more ambitious and more unequal. There was the same difference in our tempers and our tastes. He was always prudent and calm; I was always passionate and restless. Each knew well wherever the other's strength lay, and yielded to it."

"I remember him well," added another contemporary, who rose to high preferment in the Church,—“grave, silent, and demure; always studious and well behaved; reading his book instead of accompanying us to play, and recommending himself to all who saw and knew him by his quiet and decent demeanour. I think his first rise in life was owing to a boy of the name of Thurlow, an illegitimate son of the Lord Chancellor, who was at Canterbury school with us. Abbott and this boy were well acquainted, and when Thurlow went home for the holidays he took young Abbott with him. He thus became known to Lord Thurlow, and was a kind of helping tutor to his son; and I have always heard and am persuaded that it was by his Lordship's aid he was afterwards sent to college. The clergy of Canterbury, however, always took great notice of him, as they knew and respected his father."

In his fourteenth year our hero ran a great peril, and met with a deep disappointment,—which Danger he ran in his fourteenth year. may be considered the true cause of his subsequent elevation. The place of a singing-boy in the Cathedral becoming vacant, old Abbott started his son Charles as a candidate to fill it. The appointment would have secured to him a present subsistence, with the prospect of rising to 70*l.* a year, which he and his family considered a wealthy independence for him. His father's popularity among the members of the Chapter was so great that his success

was deemed certain, but from the huskiness of his voice objections were made to him, and another boy was preferred, who grew old enjoying the stipend which young Abbott had eagerly counted upon. Mr. Justice Richardson, the distinguished Judge, used to relate that going the Home Circuit with Lord Tenterden, they visited the Cathedral at Canterbury together, when the Chief Justice, pointing to a singing man in the choir, said, "Behold, brother Richardson, that is the only human being I ever envied: when at school in this town we were candidates together for a chorister's place; he obtained it; and if I had gained my wish, he might have been accompanying you as Chief Justice, and pointing me out as his old schoolfellow, the singing man."


However, the disappointed candidate, instead of abandoning himself to despair, applied with still greater diligence to his studies, and his master, proud of his proficiency, showed his verses to all the clergy in the neighbourhood, and to others whom he could prevail upon to read them, or to hear them recited — boasting that the son of the Canterbury barber was qualified to carry off a classical prize from any aristocratic versifier at Westminster, Winchester, or Eton.

The crisis of the young man's fate occurred as he reached the age of seventeen. He was then Captain of the school, and it was necessary that some course should be determined upon by which he was to earn his bread. His father proposed that he should be regularly bound apprentice to the trade in which he had been initiated from his infancy, and for which his capacity could no longer be questioned. This not only horrified Dr. Beauvoir, but caused a shock to the whole Chapter and to all the more cultivated inhabitants of Canterbury

Q. whether
he was to be
a hairdresser
or a Chief
Justice?

who had heard of the fame of their young townsman,—and a general wish was entertained that he might be sent to the University. A sum sufficient for his outfit was immediately collected in a manner calculated to prevent his feelings being hurt by hearing of the assistance thus rendered to him; and the trustees of his school unanimously conferred upon him a small exhibition in their gift, which happened to be then vacant: but this was not sufficient for his maintenance while he remained an undergraduate, and a delicacy existed about the supply being raised by an annual subscription of individuals. For some days there was a danger of the plan so creditable to Canterbury being entirely defeated, and the indenture binding the future Chief Justice to the ignoble occupation of shaving being signed, sealed, and delivered,—when the trustees of the school came to a vote that they had power to increase the exhibition from the funds of the school—and they did prospectively raise it for three years to a sum which, with rigid economy, might enable the object of their bounty to keep soul and body together till he should obtain his Bachelor's degree; then, by taking pupils or some other expedient, it was hoped that he might be able to provide for himself.

The bounty of individuals was carefully concealed from him, but at a subsequent period of his life, when he had been placed as a Judge on the Bench, he showed that he well knew the obligation under which he lay to the trustees. Attending a meeting of that body of which he had been elected a member, among the "AGENDA," there was "to consider the application from an exhibitioner of the school now at Oxford for an increase of his allowance." The Secretary declared that after a diligent search for precedents only one could be found, which had occurred many years before.



"That student was myself," said the learned Judge, and he immediately supplied the required sum from his own private purse.

When it was announced to him that he was to be sent to the University he was much pleased, without being elated; for while he escaped the drudgery and degradation of a trade not considered so reputable as that of a grocer, from which Lord Eldon had shrunk when in a very destitute condition, he foresaw that there might be much mortification in store for him, and that although all knowledge was to be within his reach, he might ere long find it difficult to provide for the day passing over him. He had likewise serious misgivings as to how he should appear as a gentleman among gentlemen. Hitherto he had only been noticed as a barber's son, and in the pressure of business on a Saturday night, when he carried home any article to a customer, he had been well pleased to receive by way of gratuity a shilling or even a smaller coin. Not entering as a servitor, he was now to sit at table and to associate on a footing of equality with the sons of the prime nobility of England. While struggling forward in life he used to dread any allusion to such topics, but in his latter days he would freely talk of his first journey from Canterbury to Oxford, and the suddenness of his transition into a new state of existence. He was, on this occasion, accompanied by a prebendary of the Cathedral, who was a *Corpus* man, and who acted the part of a father to him.*

* Samuel Pepys, the famous Diarist, who was the son of a tailor, describes his great embarrassment when, become Secretary to the Admiralty and a favourite of the King and Duke of York, he met a gentleman in reduced circum-

stances to whom, when a boy, he used to carry home fine suits of clothes. Lord Tenderden must have had such rencontres, but was never known to refer to them.

The following is a copy of his admission to his college, and of his matriculation :

" March 21st, 1781. Charles Abbott, Kent Scho."

" Termino Sti. Hilarii, 1781.

Martii 24^o.

" C. C. C. Carolus Abbott, 18, Joannis de Civitate Cantuariensi Pleb. Fil." *

It would appear that he had previously, on coming up to Oxford, tested his proficiency in classical literature by becoming a candidate for a vacant scholarship. Of this contest we have an interesting account in a letter written by him to his schoolfellow, Sir Egerton Brydges, who was then entered at Queen's College, Cambridge :

He obtains a scholarship at Corpus.

" Oxford, Sunday, March 18, 1781.

" DEAR EGERTON,

" I have been a week in Oxford, and almost finished the examination; the day of election is next Tuesday. I cannot look forward without great dread, for my expectations of success are by no means sanguine. . . . As yet I have kept to my resolution of drinking nothing. How long further I shall I know not, but I hope my pride will soon serve to strengthen it. I wish Tuesday were over.

" Monday night.

" This has been a heavy day indeed. I would not pass another in such anxiety for two scholarships. Disappointment would be easier borne than such a doubtful situation. It is a great pleasure to me to be able to reflect that there is one person who will feel for me. What happiness would it have been to me had we had the good fortune to be both of the same university! Our examination has been very strict. . . . Good night."

" Tuesday, 12 o'clock.

" At last it is all over, and—Now your expectations are at the highest—I am—Guess—elected. You will see from my manner of writing that I am very much pleased—and so in

* " A true copy.

" PHILIP BLISS,

" Keeper of the Archives of the University."

truth I am. The President said to me (but don't mention it to any one) that I had gained it entirely by my merit—that I had made a very good appearance, and so had all the other candidates.

“Yours most affectionately,
“C. ABBOTT.”

The following shows that he then felt much more exultation than on the day of his being made Chief Justice of England, when I myself observed him repeatedly yawn on the bench from listlessness :

“C. C. C., April 3, 1781.

“Yes, my dear Egerton, it does give me the most heartfelt pleasure to hear how kindly my friends rejoice in my success. Believe me, Egerton, the chief pleasure that I feel on this occasion is reading my letters of congratulation. I needed nothing to assure me of your friendship. Had any proof been wanting, your kind letter would have been sufficient. The examination was indeed a tedious piece of work, but I would undergo twice the trouble for the pleasure of knowing that I had answered the expectations of my friends. I have received two letters from my dearest mother, in which she gives me an account how sincerely all my friends at Canterbury have congratulated her on my success—and friends so much superior to our humble condition, that she says, ‘such a universal joy as appeared on the occasion I believe hardly ever happened in a town left by a tradesman’s son.’ Who would not undergo any labour to give pleasure to such parents? . . . You have heard me wish that I had never been intended for the university. It was impious; it was ungrateful: I banish the thought for ever from my heart. Not that I foresee much pleasure in a college life, but I know that my present situation is perhaps the only comfort to those whose age and misfortunes have rendered some alleviation of care absolutely necessary. Pardon the expression of these sentiments to you, and consider that they flow from the breast of a son.

“What a dissatisfied wretch I am! But a little while past to be a scholar of Corpus was the height of my ambition; that summit is (thank Heaven) gained—when another and another appears still in view. In a word, I shall not rest easy till I have ascended the rostrum in the theatre.”

The instrument of admission to his scholarship, dated

21st March, 1781, contains the following curious statement: "CHARLES ABBOTT, born at the Archbishop of Canterbury's Palace in the county of Kent and Diocese of Canterbury, aged (as he did assert) eighteen years on or about the seventh day of October last past, &c." *

His conduct during the whole of his academical career was most exemplary. Avoiding all unnecessary expense, he contrived always to preserve a decent appearance, and he gradually conquered the prejudice created against him by the whispers circulated respecting his origin and early occupations. The college tutor was Mr. Burgess, afterwards Bishop of Salisbury, who speedily discovered his merit and steadily befriended him.

His diligence
and good
conduct.

In the latter part of the eighteenth century Oxford education was at the lowest ebb, and a respectable degree might be taken by answering to the question, "Who was the founder of this university?" ALFRED THE GREAT! The study of mathematics had fallen into desuetude like that of alchymy. Young Abbott, therefore, had no opportunity of crossing the Asses' Bridge, and through life he remained a stranger to the exact sciences. But he was saved by the love of classical lore which he brought with him from Canterbury, and in which he found that a few choice spirits voluntarily participated. There being yet no tripos, the only academical honours that could be gained were the Chancellor's two medals for Latin and English composition, and these young Abbott was resolved to try for. The siege of Gibraltar had then effaced all the disasters and disgraces of the American War, and was eagerly exchanged for the capitulation of Saratoga. Under date March 5, 1783, Abbott writes to his dear friend:

* His age and the county of his birth were material as to his qualification to be elected a scholar, but the unnecessary mention of the house in which he was

born appears very strange. Some suppose that his father's shop was within the ancient precincts of the Archbishopal Palace.

"The subjects of our prizes were given out yesterday—for the Bachelors, THE USE OF HISTORY—for the Undergraduates, THE SIEGE OF GIBRALTAR—CALPE OBSESSA. I am very much displeased with the latter, for it appears to me to be at once unclassical and commonplace—

'Gun, drum, trumpet, blunderbuss, and thunder!'

But it will not do to set oneself against it. So I must endeavour to make the most of it. Yet I feel my mind labour with omens of ill success. It is certainly a noble and splendid action. The difficulty will be in separating the circumstances peculiar to it from the common occurrences which are to be found as well in all other actions as in this."

Our aspirant's first attempt was not crowned with the success he hoped for; but he was encouraged to persevere by reading on his verses when returned to him, "*quàm proximè accessit*"—the mark of approbation bestowed on the second best. More than forty years after, when a Judge on the circuit at Salisbury, he met the Rev. W. L. Bowles, the poet, who had carried off the prize. His Lordship immediately reverted to the literary contest in which they had been engaged, and very frankly confessed that the rule had been observed, DETUR DIGNIORI.*

His prize
poem.

The subject of the prize poem for the
following year was GLOBUS AEROSTATICUS,—

* The poem may be seen at full length in 'Poemata Præmii Cancellarii Academicis Donata,' &c., Oxoniæ. 1810, vol. i. p. 123. As a specimen I offer a short extract, giving an account of the state of things after the failure of the grand assault:—

"Nec vero, ut retulit nox exoptata tenebras
Cessavit furor, ardenti connecta ruina
Sæviti adhuc longe missi vis flammea ferri.
Continuo exustæ dant mœsta incendia naves,
Umbrosæque vadum fumanti tramite signant.
Securi Britones geminata tonitrua torquent;
Ipse inter medios, altoque serenior ore,
Dux late Martem spectat sublimis opacum,
Seu quondam proprio vestitum fulmine numen
Arma tenens, fatigue velut moderatur habenas.
Audit insolitum sola sub nocte fragorem
Adversum Libyæ litus, longæque tremescit
Montanas inter latebras exsomnia hyæna!"

Lunardi's voyages in his balloon having made many people believe that this vehicle, although its moving power be the medium in which it floats, might be guided like a ship impelled by the wind across the ocean, and that a method had been discovered of establishing an easy intercourse, to be reckoned by hours, between the most distant nations.* Abbott having again invoked the Cantuarensian muse, by her inspiration he was successful, and as victor mounting the rostrum in the theatre, amidst loud plaudits, recited the following beautiful lines :

GLOBUS AEROSTATICUS.

Pondere quo terras premat aër, igneus ardor
 Quam levis, et quali raptim nova machina nisu
 Emicet in cœlum, et puro circum æthere ludat,
 Pandere jam aggrediar juvat altas luminis oras
 Suspiciere, et magni rationem exquirere mundi.
 Quippe etenim, ut facili cura, certoque labore
 Hæc lustrare queas, miro eni spectacula ritu
 Circum ultro tibi mille adsunt, rerumque recludens
 Dat natura modum, et primordia notitia.
 Namque ubi sulphureis concocta bitumina venis,
 Ausa ultro mediæ penetrare in viscera terræ,
 Gens hominum effodit, fundo illic semper ab imo
 Exsudare leves æstus, summisque sub antris
 Se furtim glomerare ferunt, quin sæpe repenti
 Cum sonitu accensos, et diræ turbine flammæ,
 Rumpere vi montem, superasque effervere in auras.
 At vero angustis si terræ inclusa cavernis
 Ignea vis longum subter duraverit ævum,
 Quas ibi mox clades œheu ! quantasque videbis
 Faucibus eruptis volvi super æthera flammæ !
 Quid repetam Ausonius quoties tibi nuper in oris
 Concussas occidere urbes ? quot corpora letho
 Ipsa etiam horrendis subter distracta ruinis
 Terra debet ? dum jam luctantem funditus æstum,
 Collectosque vomens ad cœlum efflaverat ignes.
 Usque adeo est quedam subtilis cæca animal
 Materies, alti quæ vulgo ad sidera colli
 Vi propria volat, et terras contemnit inertes.

* I have often heard my father relate the consternation excited by this same Lunardi in the county of Fife. He had ascended from Edinburgh, and the wind carried him across the Firth of Forth. The inhabitants of Cupar had observed a speck, which was at first supposed to

be a bird, grow into a large globe, and pass at no great height over their heads, with a man in a boat depending from it. Some thought they could descry about him the wings of an angel, and believed that the day of judgment had arrived.

Ergo etiam hoc æstus si quis finxisse per artem
Noverit, et levibus poterit concludere textis,
Continuo e terris volucrem miro impete cernas
Ire globum, æriliæque ultro se credere ventis,
Et jam jamque magis liquidas conscendere nubes
Altius, atque atro penitus se condere coelo.
Verum ubi jam longo in spatio eluctatus abivit
Aural levis æstus, et igneus exiit ardor,
Tum demum ætheris idem se rursus ab oris
Demittet sensim, et mortalia regna reviset.

Quare age, et hæc animo tecum evolvisse sagaci
Cura sit, et cæcas meditando exquirere causas.
Nec sine consilio fieri hæc, sine mente rearis,
Aut rebus non jura dari, verum omnia volvi
Lege una, et certo sub fœdere labier orbem.

Principio hanc omnem cœli spirabilis auram,
Terræque oras, et lati marmora ponti,
Vis eadem regit, ac uno omnia corpora ritu
In medium, magna connixa cupidine tendunt,
Pondere quidque suo; firmis ita nexibus orbis
Scilicet, et tuto circum se turbine versat.
Proinde, magis gravibus, densisque ut corpora cuncta
Seminibus constant, ita per leviora necesse est
Subsidiasse magis; quævis ergo rarior intus
Textura, et levibus constant quæcunque elementis;
Hæc contra e medio, sursum eluctata videntur
Volvere se supra, et magno circum æthere labi:
Quinetiam hic, tenuis quanquam et diffusilis, ær,
Mollia qui rebus dat vitæ pabula, et omnem
Herbarumque fovet prolem, gentemque animantùm,
Ipse etiam, immani descendens pondere, terris
Incumbit, gravibusque urget complexibus orbem.
At vero insolitos si qua sibi parte calores
Hauserit, hac ultro se latius ipse relaxans
Rarescensque ær, leviori ita corpore, longe
Emitat e terra, et coelo spatietur in alto.
Hinc adeo expressos nimio sub sole vapores
Arida se per prata ferunt attollere, et alte
Cœruleam nitidis variare coloribus æthram;
Sæpe itaque et subitis incendi ardoribus auras
Per noctem, et longos in nubila spargier ignes.
Nonne vides etiam taciti per devia ruris,
Agricolæ ut parvo glomeratus de lare fumus
Avolat, et tenuem rotat alte in sidera nubem?
Quare etiam, atque etiam, commixto semper ab igni
Mutaturque ær, alienaque fœdera discit,
Et varium exeret, conversa lege, tenorem.

Scilicet has rerum species, hæc fœdera, secum
Contemplata diu, et vigilantem mente secuta,
Hinc etiam ipsa novum simili sub imagine cœptum
Gens humana movet, curruque evecta per auras
Torquet iter, cœlumque audet peragrarè profundum.

Ergo etiam hanc ipsam versu me attingere partem
Ne pigeat; tennes nec dedignere mopeno
Tu didicisse artes; quippe ultro carbasa Persæ

Dant levia, et viridi glomerata sub arbore bombyx
 Vellera suspendit; tu lento tenuia fuco
 Texta line, exiguoque liquescens adsit ab igni
 Et cera, et spissum Panchaio e cortice gluten.
 Maximus hic labor est, hæc alti gloria cepti.
 Ni facias, laxi per aperta foramina veli
 Heu ! tibi mox rare nimium penetrabilis aures
 Vis ibit, frustra que artem tentabis inanem.

Quod superest, seu jam piceas secta abiete tædas,
 Et stipulam crepitantem, et olentis vellera lanæ,
 Supponi, rapidumque velis advertier ignem,
 Seu magis ardenti succensas subter olivo
 Lampadas admota placeat suspendare flamma,
 Quicquid erit, pariter rarus bibet ipsa calores,
 Ingentemque tumens se machina flectet in orbem.

Quid dicam, et quales novit tibi chymicus artes ?
 Quove modo effusum resoluta e sulphure acetum,
 Et chalybis ramenta, levesque a flumine rores
 Ille docet miscere, atrumque exsolvere in ignem ?
 Nempe ea cum proprio jam collabefacta calore
 In sua se expediunt iterum primordia, et arctos
 Dissolvunt nexus, et vincia tenacia laxant :
 Ignea tum subito rapidæ tibi vis animæ
 Exagitata foras, validis exæstuat ultro
 Vorticibus, clausæque arcte fornace remugit ;
 Hanc ipse appositis effunde canalibus, ipse
 Pendentem immissis distende vaporibus orbem.

Quin age, nec pigro Britonum depressa veterano
 Corda diu jaceant, dum late ingentibus ausis
 Gallia se in meritis attollit sola triumphos.
 Illa quidem positis ultro peccator armis,
 Hanc ipsam in laudem, et potioris munera palmæ
 Advocat, illa etiam faustos jam experta labores
 Omina magna dedit, certasque exempla vial.
 Attonitam quoties tremefacto pectore gentem
 Vedit arundinea prælabens Sequana ripa
 Stare, laborantes volventem in corde tumultus,
 Audax dum ante oculos magni moliminis auctor
 Avolat in cælum, et spissa sese occulit umbra ;
 Aut late ærium faustis aquilonibus æquor
 Tranat ovans, validasque manu moderatur habenas.
 Tum primum superi patefacta in regna profundi
 Mortales oculi, mediæ e regionibus æthra,
 Convertere aciem, densis dum obducta tenebris
 Sub pedibus terra atque hominum spatia ampla recedunt.
 Nam neque per totum cessabant nubila cælum
 Densari, et vastos umbrarum attollere tractus,
 Nec cuncti se circum ultro variare colores,
 Cuncta figurarum late convolvier ora ;
 Præsertim extremo cum jam pendebat Olympo
 Sol, transversa rubens; aut primum candida Phœbe
 Monstrâratque ortem, et cœlo se pura ferebat.
 Atqui illic vacuas nec jam vox, nec sonus, aures
 Attingit, sed inane severa silentia regnant
 Undique per spatium, et vario trepidantia motu

Corda quatit pavor, atque immixto horrore voluptas.

*Hæc adeo, hæc præclara novæ primordia fame
Gallia, tu posuisti; hoc jam mortalibus unum
Defuit, excusis dudum patefacta tenebris
Alta animi ratio, et vital norma severæ
Eluxere; patent terræque, atque æquora ponti,
Astrorumque viæ, atque alti lex intima mundi.*

*Jamque adeo et liquidæ quæ sit tam mobilis auræ
Natura, et superi passim per inania cœli
Qua ratione gerant se res, et fœdera nectant
Explorare datur; quo pacto rarior usque
Surgat, et in vacuum sensim se dissipet aër;
Frigora quæ, qui ignes lateant; quanto impete venti
Huc superia, illuc infernis, partibus instant,
Convulsæque agitent transverso flamine cœlum.*

*Ergo etiam humanam, concepto hinc robore, mentem
Insolito tandem nisu, et majoribus ausis,
Tollere se cernes, penitusque ingentia lati
Aëris in spatia, et magni supera alta profundi
Moliri imperium ac multa dominariæ arte.*

He thus announced his success to his friend Egerton :

“C. C. C., June 16, 1784.

“I have delayed writing to you for some time, partly because I waited for the decision of the prizes, but principally because I have been constantly employed in endeavouring to escape my own thoughts by company and every means I could. I am now, however, repaid for my anxieties. They say it was a hard run thing. There were sixteen compositions sent in. . . . All that has happened this morning appears a dream.”

Soon after this his joy was turned into mourning by the death of his father. His mother continued to keep the shop at Canterbury for the sale of perfumery, and he devotedly strove to comfort and assist her. For her sake he declined an advantageous offer to go to Virginia, as tutor to a young man of very large fortune there. He was willing to forego a considerable part of his own salary, so that 50*l.* a-year might be settled on his mother for life. “This,” he wrote, “with the little left her by my father, would afford her a comfortable subsistence without the fatigue of business, which she is becoming very unable to bear.”* But this condition being declined, the negotiation went off.

* Letter to Sir Egerton Brydges, 2nd June, 1785

The English Essay was still open to him, and the next year he likewise carried off this prize. A.D. 1785.
 If his performance was less dazzling, it gave His prize essay.
 more certain proof of his nice critical discrimination, and, from the exquisite good sense which it displayed, of his fitness for the business of life. The subject was THE USE AND ABUSE OF SATIRE.

In this composition he showed that he had already acquired (whence it is difficult to conjecture) that terse, lucid, correct, and idiomatic English style which afterwards distinguished his book on the LAW OF SHIPS, and his written judgments as Chief Justice of the King's Bench. The following is his analytical division of the subject, evincing the logical mind which made him a great judge :

“Early use of panegyrical and satiric compositions; gradual increase of the latter with the progress of refinement.

“Different species of satire, invective, and ridicule.

“General division of satire into personal, political, moral, and critical.

“I. 1. Personal satire necessary to enforce obedience to general instructions. 2. Its abuse, when the subject is improperly chosen, when the manner is unsuitable to the subject, and when it proceeds from private animosity.

“II. 1. Political satire, necessary for the general support of mixed governments. 2. Its abuse, when it tends to lessen the dignity of the supreme authority, to promote national division, or to weaken the spirit of patriotism.

“III. 1. Moral satire, its use in exposing error, folly, and vice. 2. Its abuse, when applied as the test of truth, and when it tends to weaken the social affections.

“IV. 1. Critical satire, its use in the introduction and support of correct taste. 2. Its abuse, when directed against the solid parts of science, or the correct productions of genius.

“Conclusion. Comparison of the benefits and disadvantages derived from satire. Superiority of the former.”

His reflections on Personal Satire will afford a fair specimen of his manner :

“Personal satire has been successfully directed in all countries

against the vain pretenders to genius and learning, who, if they were not rendered contemptible by ridicule, would too often attract the attention, and corrupt the taste, of their age. By employing irony the most artful, and wit the most acute, against the unnatural and insipid among his contemporaries, Boileau drew the affections and judgment of his nation to the chaste and interesting productions of Molière and Racine.

“Such have been the advantages derived from personal satire, but so great on the contrary are the injuries resulting from its misapplication, that the legislature of all nations has been exerted to restrain it. For if they, whose failings were unknown and harmless, be brought forth at once to notice and shame, or if, from the weakness common to human nature, illustrious characters be made objects of contempt, the triumphs of vice are promoted by increasing the number of the vicious, and virtue loses much of its dignity and force by being deprived of those names, which had contributed to its support. Not less injurious to science is the unjust censure of literary merit, which tends both to damp the ardour of genius, and to mislead the public taste. The most striking examples of the abuse of personal satire are furnished by that nation in which its freedom was the greatest. The theatres of Athens once endured to behold the wisest of her philosophers, and the most virtuous of her poets, derided with all the grossness of malicious scurrility. Nor has modern poetry been altogether free from this disgrace. Fortunate, however, it is that, although the judgment of the weak may be for a time misguided, truth will in the end prevail: the respect and admiration due to the names of Burnet and of Bentley, of Warburton and of Johnson, are now no longer lessened by the wit of Swift, or the asperity of Churchill.

“Even where the subject or design is not improperly chosen, abuse may still arise from the disposition and colouring of the piece. When bitterness and severity are employed against men whose failings may be venial and light, or ridicule degenerates either into the broad attacks of sarcastic buffoonery, or the unmanly treachery of dark hints and poisonous allusions, not only the particular punishment is excessive and unjust, but also general malice is fostered by new supplies of slander.”

In conclusion he thus strikes the balance between the evils inflicted by satire, and the benefits which it confers :

“From this general representation of the good and ill effects of satire, we may be enabled to form a comparison of their

respective importance. By the improper exercise of satire individuals have sometimes been exposed to undeserved contempt; nations have been inspired with unjustifiable animosity; immoral sentiments have been infused; and false taste has received encouragement. On the contrary, by the just exertions of satire personal licentiousness has frequently been restrained; the establishments of kingdoms have been supported, and the precepts of morality and taste conveyed in a form the most alluring and efficacious. The success, however, of all those productions that have not been directed by virtue and justice, has been confined and transient, whatever genius or talents might be employed in their composition; by the wise among their contemporaries they have been disregarded, and in the following age they have sunk into oblivion. But the effusions of wit, united with truth, have been received with universal approbation, and preserved with perpetual esteem, their influence has been extended over nations, and prolonged through ages. Hence, perhaps, we need not hesitate to conclude that the benefits derived from satire are far superior to the disadvantages with regard both to their extent and duration; and its authors may therefore deservedly be numbered among the happiest instructors of mankind."

In 1785 he became B.A. If the modern system of honours had been then established, he would ^{His Bachelor's degree,} no doubt have taken a double first class; but when this degree was conferred upon him and others, there was nothing in the proceeding to distinguish him from the greatest dunce or idler in the whole university. By his prize compositions and college exercises his fame was established, and his fortune was made. All that followed in his future career was in a natural sequence, and with the exception of the deafness of Sir Samuel Shepherd when Attorney-General, which led to Abbott being CHIEF JUSTICE instead of remaining a puisne judge, there appeared nothing of accident or extraordinary luck in his steady advancement.

From the completion of his second year he had begun to have private pupils in classics, whose fees eked out sufficiently his scanty allowance. He neither gave nor accepted invitations to wine-parties; his apparel was

ever very plain, though neat ; and instead of getting in debt by buying or hiring hunters, it is a curious fact that he never once was on horseback during the whole course of his life. In the declining state of his health, shortly before his death, he was strongly recommended to try horse exercise ; but, as he related to his old friend Philip Williams (who told me), he objected " that he should certainly fall off like an ill-balanced sack of corn, as he had never crossed a horse any more than a rhinoceros, and that he had become too stiff and feeble to begin a course of cavaliering." He added, with a sort of air of triumph, " My father was too poor ever to keep a horse, and I was too proud ever to earn sixpence by holding the horse of another." *

His horse-
manship. " Abbott's college was very desirous of securing his services, and soon after taking his degree he was elected a fellow and appointed junior tutor along with Mr. Burgess, who was delighted to have him as a colleague. Under them Corpus rose considerably in reputation, and it was selected by careful fathers who anxiously looked out for a *reading college*." †

* I cannot alter my text, as I can declare that I have repeated the very words of Philip Williams, a very honourable man and a very intimate friend of Lord Tenterden ; but it has been asserted that, while at the bar before his accident, Abbott himself kept a horse which he was accustomed to bestride.

† I am indebted for the following entry in the records of C. C. C. to my brother Judge and dear friend Mr. Justice Coleridge, himself a distinguished ornament of this College :

" June 30, 1786. At a full meeting convened this day by the President for the purpose of considering the propriety of bestowing some mark of public distinction on Charles Abbott, a Bachelor of this House, for a very excellent Essay on the Use and Abuse of Satire, delivered by him in the theatre on the 28th instant, as the Prize Composition of the year ; by which, as also by a copy of verses spoken by him three years back in the same place as the Prize Composition of that day, great credit and honour has through him accrued to the Society of which, both for diligence and regularity, he is an exemplary member ; it was unanimously resolved to present him with a copy of the Oxford edition of Cicero's works, handsomely bound, and that the President do express to him the high sense the College entertain of his great merit, and of the just title he has to this distinguishing mark of their favour and regard.

While fellow and tutor, Abbott was intended for the Church, and the time now approached when he ought to go into orders. His destination was again changed by his having become private tutor to a son of the famous Mr. Justice Buller. In a letter to his friend Egerton Brydges, dated 22nd June, 1785, he says :—

His acquaintance with Judge Buller.

"I had received a slight hint that the President had another offer to make to me. This is the tuition of Judge Buller's son, who will come from the Charterhouse to enter at this college next term. I was desired to fix the salary; but, upon consultation with Sawkins, declined it. The President and Dr. Bathurst, canon of Christ Church (who recommended the College to the Judge), are disposed to think of 200*l.* a year exclusive of travelling expenses; but whether they will propose this to the Judge, or desire him to name, I am not certain. Mr. Yarde has a large fortune independent of his father, for which he changed his name. Sawkins advised me (and the President approved) to refuse one hundred guineas. Between the two offers there could be no hesitation; and indeed my friends here thought the American place unworthy of my acceptance. If we agree upon terms, I propose to spend this summer in France, if the Judge wishes his son's tutor to be able to speak French. I am particularly pleased with the appearance of this offer, as it will give me an opportunity of being much in London."

"The following inscription was inserted in the title page by the President :

EXIMIO JUVENI
CAROLO ABBOTT, A.B.,
Ob egregios in bonis Literis profectus,
Quos Præmio Academico Bis reportato pulchrè ostendit,
et
Ob mores probatissimos,
Hanc Oxoniensem Ciceronis Operum Editionem,
D. D.
Præses et Socii Collegii Corporis Christi,
Junii 30^{mo}, 1786."

Mr. Justice Coleridge observes with just pride in his letter to me containing this communication: "It is pleasant to see at a period when Oxford is commonly supposed to have been sunk in lethargy, the Fellows of a College meeting in full number to review and reward the conduct and merit of one of their most humbly-born scholars."

In a letter of July 10th, 1785, he adds :—

"The plan which I mentioned to you in my last respecting Mr. Yarde has been so altered by the Judge, that the parts of it from which I promised myself most pleasure and advantage are gone. Still the offer is too good to be refused. It is to attend him in college only. Family circumstances make the Judge wish to have his son at home in London as little as possible. The matter is not entirely settled; but for residence with him here during the terms, I shall have, I believe, a hundred guineas a year. If he stays here any vacation, or if I accompany him out (which it seems I shall sometimes do), a consideration is to be made for it. Mr. Willoughby, a particular friend of the Judge, and an acquaintance of the President, is commissioned to settle the affair."

The affair was at last settled satisfactorily, and Abbott did act as Mr. Yarde's private tutor for two or three years, sometimes accompanying his pupil to the family seat in Devonshire. The quick-sighted Judge soon discovered Abbott's intellectual prowess, and his peculiar fitness for law. He therefore strongly advised him to change his profession, and, somewhat profanely, cited to him a case from the Year Books, in which the Court laid down that "it is actionable to say of an attorney that he is a d——d fool, for this is saying that he is unfit for the profession whereby he lives; but *aliter* of a parson, *par ce que on poet estre bon parson et d——d fool.*" In serious tone the legal sage pronounced, that with Abbott's habits of application and clear-headedness his success was absolutely certain—saying to him, "You may not possess the garrulity called *eloquence*, which sometimes rapidly forces up an impudent pretender, but you are sure to get early into respectable business at the bar, and you may count on becoming in due time a Puisne Judge."* Although Abbott had been contented with

* Sir Egerton Brydges, after mentioning how Abbott's destiny depended on his being tutor to Buller's son, merely adds, "That learned and sagacious Judge immediately appreciated his solid and strong talents; and recommended him to

embrace the profession of the law, rather than of the Church, for which he had hitherto designed himself." The language in which the advice was given rests on tradition.

the prospect of obscurely continuing a college tutor till he succeeded to a country living, where he might tranquilly pass the remainder of his days, he was not without ambition ; and when he looked forward to his sitting in his scarlet robes at the Maidstone assizes, while citizens of Canterbury might travel thither to gaze at him, he was willing to submit to the sacrifices, and to run the risks which, notwithstanding the sanguine assurances of his patron, he was aware must attend his new pursuit. He was now in his twenty-sixth year, and he had resided seven years in his college. His only certain dependence was his fellowship, the income of which was not considerable ; but from the profits of his tutorship he had laid by a little store, which he hoped might not be exhausted before it was replenished by professional earnings.

In much perplexity as to the course of study he should adopt to fit himself for the bar, he thus addressed his faithful friend :—

“ C. C. C., June 13th, 1787.

“ . . . I can never sufficiently thank you for the offer of your house in town. There are two modes in which I might enter the profession of the law—that which you propose, of residing chiefly in Oxford till I am called to the bar, which would be the line of study which I should choose ; but then what am I to do when called to the bar with the enormous expense of going circuits, &c. ?—and that of going at once to a special-pleader, and practising first below the bar. As far, however, as I am able to comprehend this line of practice, which seems to me to consist in a knowledge of forms and technical minutiae, it would be very unpleasant to me, and the necessity of sitting six or eight hours a day to a writing-desk renders it totally impracticable, as from the peculiar formation of the vessels in my head, writing long never fails to produce a headache. Indeed any great exertion has always the same effect, so that on this account alone I think it will be wiser to choose a more quiet profession.”

However, his misgivings were much quieted by a conference he had with his namesake Abbott, after-

wards elected Speaker of the House of Commons, and created Lord Colchester. Thus, in a letter dated 13th October, 1787, he writes to Sir Egerton:—

“I received a visit from Abbott this morning, and we held a long conversation together. He spent a year in a Pleader's office, and another in a Draughtsman's, and now practises in equity. Very particular reasons determined him to the Court of Chancery; but he would advise me to adopt the common law, and chiefly on this account: the practice of the Court of Chancery being necessarily confined to certain branches of the law in exclusion of certain others, a man's general professional connections can contribute less to his assistance, and he has less opportunity of distinguishing himself. At the same time a person who begins and goes forward in equity seldom is able to make himself a perfect master of his profession, or qualify himself for many of its highest offices. With regard to my own particular case, Abbott thinks that, even if no connection determined me, it would be better to take one year to look into books and courts a little, than to enter at once into an office where I could not possibly understand the business without previous knowledge. This, you know, is exactly what I have always thought, and wished others to think. He thinks too, that with proper application, I might get sufficient knowledge by working one year in an office to enable me to proceed afterwards by myself, and doubts not that by the help of two or three introductions to men in business, such as Foster, &c., I should make my way without expending so much as six hundred pounds. This, you see, is all very flattering. I wish it be not too flattering.”

Being thus reassured, on the 16th day of November,

He is entered
of the
Temple.

1787, he was admitted a student of the Middle Temple;* and he soon after hired a small set of chambers in Brick Court. By Judge

* Die 16 Novembris 1787.

“*Ma^r. Carolus Abbott Collegii Corporis Christi apud Oxonienses Scholaris Fillius natu secundus Johannis Abbott, nuper de Civitate Cantuariensi, defuncti, admissus est in Societatem Medij Templi Londini specialiter,*

“*Et dat. pro fine . . . 4 : 0 : 0*”

From the following entry in the books

of C. C. C., it appears that at this time he had leave of absence from his College:—

“1787. Nov. 13th. Abbott, a Bachelor of the House, applied for leave of absence to keep the London Law Terms. The same was granted (conformably to Statute) by the President, one Dean, one Bursar, and two other Fellows *Promotionis causâ*.”

Buller's advice, to gain the knowledge of writs and practice, for which in ancient times some years were spent in an Inn of Chancery, he submitted to the drudgery of attending several months in the office of Messrs. Sandys and Co., eminent attorneys in Craig's Court, where he not only learned from them the difference between a *Latitat*, a *Capias*, and a *Quo Minus*, but gained the good will of the members of the firm and their clerks,* and laid the groundwork of his reputation for industry and civility which finally made him Chief Justice.

His next step was to become the pupil of George Wood, the great master of Special Pleading, who had initiated in this art the most eminent lawyers of that generation. Resolved to carry away a good pennyworth for the 100 guinea fee which he paid, he here worked night and day; he seemed intuitively to catch an accurate knowledge of all the most abstruse mysteries of *DOCTRINA PLACITANDI*, and he was supposed more rapidly to have qualified himself to practice them than any man before or since. The great model of perfection in this line, in giving an account of his status pupillaris under the eminent special pleader, TOM TEWKESBURY,† sings—

His industry
as a law
student.

"Three years I sat his smoky room in,
Pens, paper, ink, and pounce consumin'."

But at the end of one year Abbott was told that he could gain nothing more by quill-driving under an instructor.

* "Nor did I not their Clerks invite
To taste said venison hashed at night."

Pleader's Guide.

† Hero of ANSTER's '*Pleader's Guide*,' a poem which is, I am afraid, now antiquated, and which will soon become almost unintelligible from the changes in our legal procedure, but the whole of which I have heard Professor Porson, at the Cider Cellar in Maiden Lane, re-

cite from memory to delighted listeners. He concluded by relating, that when buying a copy of it and complaining that the price was very high, the bookseller said, "Yes, Sir, but you know *Law books* are always very dear."

With characteristic prudence he resolved to practise as a special pleader below the bar till he had established such a connexion among the attorneys as should render his *call* no longer hazardous, citing Mr. Law's splendid success from following the same course. He

A.D. 1788.

He practises
as a pleader
under the
bar.

accordingly opened shop, hired a little urchin of a clerk at ten shillings a week, and let it be understood by Messrs. Sandys and all his friends that he was now ready to draw Declarations, Pleas, Replications, and Demurrers with the utmost despatch, and on the most reasonable terms. Clients came in greater numbers than he had hoped for, and no client that once entered his chambers ever forsook him. He soon was, and he continued to be, famous for "the ever open door, for quick attention when despatch was particularly requested, for neat pleadings, and for safe opinions."*

Seven years did he thus go on, sitting all day, and a great part of every night, in his chambers,—verifying the old maxim inculcated on City apprentices, "Keep your shop and your shop will keep you." He was soon employed by Sir John Scott, the Attorney-General, in preparing indictments for high treason and criminal informations for libel in the numerous state prosecutions which were going on during "the reign of terror," and by his pupils and his business he was clearing an annual income of above 1000*l*. He had now reached the age of thirty-three, which, although it is considered in our profession as early youth, the rest of the world believe to smack of old age.† He

* Townsend's Twelve Judges, vol. i. 243.

† I remember Mr. Topping giving great offence to the junior members of the bar, who expected to be considered young men till fifty-five, by observing, when counsel for the plaintiff in a crim. con. cause, that the defendant's conduct was the more inexcusable, "as the hey-

day in the blood was over with him, and he had reached the mature age of thirty-three." According to Lord Byron, a lady thinks she has married an aged husband, although he may be several years younger than that:

"Ladies even of the most uneasy virtue
Prefer a spouse whose age is under
thirty."

exclaimed, "Now or never must I take the leap into the turbid stream of forensic practice, in which so many sink, while a few—*rari nantes in gurgite vasto*—are carried successfully along to riches and honour.

Accordingly he was called to the bar in Hilary Term, 1796, by the Society of the Inner Temple,* He is called to the bar. and a few weeks after he started on the

Oxford Circuit. I myself joined that circuit about fourteen years later, when I formed an intimacy with him, which continued till his death. I then found him with a junior brief His success on the Oxford Circuit.

in every cause tried at every assize town; and I heard much of his rapid progress and steady success, with a good many surmises, among his less fortunate brethren, that it was not from merit alone that he had surpassed them. He had at once stepped into full business, and this they ascribed to the patronage of an old attorney called Benjamin Price, who had acted as clerk of assize for half a century, and was agent in London for almost all the country attorneys in the eight counties which constituted the Oxford Circuit. But in truth Abbott was greatly superior to all his rivals as a junior counsel; and this superiority was quite sufficient to account for his success, although he certainly had been very civil always to old Ben, and old Ben had been very loud in sounding his praise. He was most perspicacious in advising on the bringing and defence of actions; he prepared the written pleadings on either side very skilfully, and without too much finesse; he

* The following is a copy from the books of that Society of his admission and of his call:—

"INNER TEMPLE.

"Charles Abbott, second son of John Abbott, late of the City of Canterbury, deceased (who was admitted of the Society of the Middle Temple the sixteenth day of November, in the year of

our Lord 1787, as by Certificate from the Middle Temple appears), admitted of this Society the eighth day of May, in the year of our Lord 1793.

"*Calls to the Bar.*—*Hilary Term, 1796.*

"Mr. John Fuller,
"Mr. Charles Abbott, } 15th Feb. 1796."
"Mr. William Lloyd,
"Mr. John Wadman, }

was of admirable assistance at the trial to a shallow leader; he acknowledged that he was an indifferent hand at cross-examining adverse witnesses, but he never brought out unfavourable facts by indiscreet questions; he had great weight with the Judge by his quiet and terse mode of arguing points of law arising at nisi prius; and if a demurrer, a motion in arrest of judgment, a special case, a special verdict, or a writ of error was to be argued in banc, he was a full match for Holroyd, Littledale, or Richardson.

In about two years after his call a deep sensation was produced by the unexpected prospect of an opening for juniors on the Oxford Circuit. It was the custom in those days, that while the Judges went all the way round in their coaches and four, the counsel journeyed on horseback. Abbott refused to cross the most sedate horses which were offered to him, from the certain knowledge that he must be spilt; but he took it into his fancy that it would be a much more easy matter to drive a gig, although to this exercitation he was equally unaccustomed. As far as Gloucester, after some hair-breadth escapes, he contrived to get, without fracture or contusion; but in descending a hill near Monmouth his horse took fright, he pulled the wrong rein, he was upset, and, according to one account, "he died immediately from a fracture of the skull," and, according to another, "he was drowned in the Wye." The news was brought to the assembled barristers at their mess, and all expressed deep regret. Nevertheless the brightened eyes and flickering smiles of some led to a suspicion that the dispersion of briefs might be a small recompense for their heavy loss. It turned out that there had been considerable exaggeration as to the fatal effect of Abbott's overturn; but in truth his leg was broken in two places, and he had received very severe injury in other parts of his body—so that from

this accident he was permanently lame, and he had a varicose vein on his forehead for the rest of his days. Although he was able in a few weeks to return to business, his constitution materially suffered from this shock, and the inability to take exercise which it superinduced.

While flourishing on the circuit he had as yet very slender employment at Guildhall, and he felt a great desire to participate in the commercial business there, which is considered the most creditable and the most lucrative in the courts of common law. With this view, in spite of the sneers of Lord Ellenborough at book-writing lawyers, by the advice of Sir John Scott, who had become his avowed patron, he composed and published a treatise 'ON MERCHANTS' SHIPS His book on SHIPPING. AND SEAMEN.' In no department does English talent appear to such disadvantage as in legal literature; and we have gone on from bad to worse in proportion as method and refinement have advanced elsewhere. Bracton's work, 'De Legibus et Consuetudinibus Angliæ,' written in the reign of Henry III., is (with the exception of 'Blackstone's Commentaries') more artistically composed and much pleasanter to read than any law-book written by any Englishman down to the end of the reign of George III.—while we were excelled by contemporary juridical authors not only in France, Italy, and Germany, but even in America. Abbott did a good deal to redeem us from this disgrace. Instead of writing all the legal dogmas he had to mention, and all the decisions in support of them, on separate pieces of paper, shaking them in a bag, drawing them out blindfold, and making a chapter of each handful, connecting the paragraphs at random with conjunctives or disjunctives ("And," "So," "But," "Nevertheless"),—he made an entirely new and masterly analysis of his subject; he divided it logically and lucidly; he

laid down his propositions with precision; he supported them by just reasoning, and he fortified them with the dicta and determinations of jurists and judges methodically arranged. His style, clear, simple, and idiomatic, was a beautiful specimen of genuine Anglicism. The book came out in the year 1802, dedicated (by permission) to the man who had suggested the subject to him, —now become Lord Chancellor Eldon. Its success was complete. Not only was it loudly praised by all the Judges, but by all the City attorneys, and, ever after, the author was employed in almost all the charter-party, policy, and other mercantile causes tried at

His business
at Guildhall.

Guildhall. Nay, the fame of the book soon crossed the Atlantic, although it was for some time ascribed to another; for, as I have heard the true author relate with much glee, the first edition, reprinted at New York, was announced in the title-page to be by "the RIGHT HONOURABLE CHARLES ABBOTT, SPEAKER OF THE HOUSE OF COMMONS IN ENGLAND." This was his distinguished namesake, Lord Colchester, who had been at the bar, and who was complimented by the American editor for employing his time so usefully during the recess of Parliament.*

Our hero was now as eminent and prosperous as a counsel can be at the English bar, who is not a leader—either with a silk gown as the ordinary testimonial of his eminence—or, if this for any reason be withheld from him, dashing into the lead in bombazeen like Dunning, Brougham, and Scarlett. † Abbott wore the bombazeen quite contentedly, and shrunk from everything that did not belong to the subordinate duties of the grade of the profession to which this costume is

* Our legal literature has likewise been greatly indebted to the admirable works of Lord St. Leonards on "Vendors and Purchasers" and on "Powers."

† Dunning always wore stuff, except

during the short time when he was Solicitor-General. The two others were in the full lead long before they were clothed in silk. I myself led the Oxford circuit in bombazeen for three years.

supposed to be appropriated. Yet both for profit and position he was more to be envied than most of those who sat within the bar, and whose weapon was supposed to be eloquence. He was a legal pluralist. His best appointment was that of counsel to the Treasury, or rather "Devil to the Attorney-General"—by virtue of which he drew all informations for libel and indictments for treason, and opened the pleadings in all Government prosecutions. Next he was counsel for the Bank of England, an office which, in the days of one pound notes when there were numerous executions for forgery every Old Bailey Session, brought in enormous fees. He was likewise standing counsel for a number of other corporations and chartered companies, and being known to be a zealous churchman as well as good ecclesiastical lawyer, he had a general retainer from most of the Prelates, and Deans and Chapters in England. Erskine in all his glory never reached 10,000*l.* a year; yet Abbott, "*Leguleius quidam*," is known in the year 1807, to have made a return to the income-tax of 8026*l.* 5*s.* as the produce of his professional earnings in the preceding year, and he is supposed afterwards to have exceeded that amount.

His large income.

I believe that he never addressed a jury in London in the whole course of his life. On the circuit he was now and then forced into the lead in spite of himself, from all the silk gowns being retained on the other side,—and on these occasions he did show the most marvellous inaptitude for the functions of an advocate, and almost always lost the verdict. This partly arose from his power of discrimination and soundness of understanding, which, enabling him to see the real merits of the cause on both sides, afterwards fitted him so well for being a Judge. I remember a Serjeant-at-Law having brilliant success at the bar from always sincerely believing that his client

His incompetency as an advocate.

was entitled to succeed, although, when a Chief Justice he proved without any exception, and beyond all comparison, the most indifferent Judge who has appeared in Westminster Hall in my time. Poor Abbott could not struggle with facts which were decisive against him, and if a well-founded legal objection was taken, recollecting the authorities on which it rested, he betrayed to the presiding Judge a consciousness that it was fatal. His physical defects were considerable, for he had a husky voice, a leaden eye, and an unmeaning countenance. Nor did he ever make us think only of his intellectual powers by any flight of imagination or ebullition of humour, or stroke of sarcasm. But that to which I chiefly ascribed his failure was a want of boldness, arising from the recollection of his origin and his early occupations. "He showed his blood." Erskine undoubtedly derived great advantage from recollecting that he was known to be the son of an Earl, descended from a royal stock. Johnson accounts for Lord Chat-ham's overpowering vehemence of manner from his having carried a pair of colours as a cornet of horse. Whether Abbott continued to think of the razor-case and pewter basin I know not; but certain it is there was a most unbecoming humility and self-abasement in his manner, which inclined people to value him as he seemed inclined to value himself. Called upon to move in his turn when sitting in court in Term time, he always prefaced his motion with "I humbly thank your Lordship." I remember once when he began by making an abject apology for the liberty he was taking in contending that Lord Ellenborough had laid down some bad law at *nisi prius*, he was thus contemptuously reprimanded:—"Proceed, Mr. Abbott, proceed; it is your right and your duty to argue that I misdirected the jury, if you think so."

He had apprehensions that he could not remain much

longer stationary at the bar. He said to me that if he were sure of having the second brief in a cause he would never wish to have the first, but that he might be driven to hold the first if he could not have the second. Soon after this display of rising spirit he had a great opportunity of gaining distinction, for he was called upon to lead a very important Quo Warranto cause at Hereford, on which depended the right of returning to Parliament a member for a Welsh borough. But nothing could rouse him into energy, and he had a misgiving that the proper issue was not taken on the 7th replication to the 10th plea. When he had been addressing the Jury as leader for half an hour a silly old barrister of the name of Rigby came into Court, and when he had listened for another half hour, believing all this was preliminary to Dauncey or Serjeant Williams acting the part of leader, and explaining what the case really was about, he innocently whispered in my ear, "How long Abbott is in opening the pleadings in this case!" The verdict going against him, a new trial was to be moved for next Term,—when he had not the courage to make the motion himself, but insisted that it should be made by Scarlett of the Northern Circuit, who was still practising without the bar in a stuff gown like himself.

His chief
effort in
oratory.

In 1808, when Mr. Justice Lawrence differed with Lord Ellenborough, and retired into the Common Pleas, Abbott had declined the offer of being made a Puisne Judge, on account of the diminution of income which the elevation would have occasioned to him—but soon after I joined the Circuit I found that he earnestly longed for the repose of the Bench, and he was much chagrined that his patron, Lord Eldon, did not renew the offer to him. Sir Egerton Brydges, who was still more in his confidence, thus writes: "For twenty years he worked at the bar with steady and progressive profit

and fame, but with no sudden bursts and momentary blaze, till his health and spirits began to give way. I well remember in the year 1815, his lamenting to me in a desponding tone that his eyesight was impaired, and that he had some thoughts of retiring altogether from the profession. I dissuaded him, and entreated him not to throw away all the advantages he had gained by a life of painful toil, at the very period when he might hope for *otium cum dignitate*. I left him with regret, and under the impression that his health and spirits were declining."

While in Court upon the Circuits he betrayed a languor which showed that he was sick of it, but in society, and in travelling from assize town to assize town, he was lively and agreeable. No one relished a good dinner more, although he never was guilty of any excess. He still filled the office of Attorney-General in the Grand Circuit Court, held at Monmouth, which I regularly opened as crier, holding the poker instead of a white wand; and being so deeply versed in all legal forms, he brought forward his mock charges against the delinquents whom he prosecuted with much solemnity and burlesque effect—so as for the moment to induce a belief that notwithstanding his habitual gravity, Nature intended him for a wag.*

His conduct
as Attorney-
General in
the Grand
Circuit
Court.

I ought to have mentioned that as early as the year 1795, he was so confident of increasing employment that he ventured to enter the holy state of matrimony, being united to

His marriage.
July, 1795.

* Before the public he was always afraid of approaching a jest lest his dignity might suffer, and in his book on Shipping he would not, without an apology, even introduce a translation of a passage from a foreign writer which might cause a smile: "If mice eat the cargo, and thereby occasion no small

damage to the merchant, the master must make good the loss, because he is guilty of a fault; yet if he had cats on board he shall be excused (Roccus, 58). The rule and exception, *although bearing somewhat of a ludicrous air*, furnish a good illustration of the general principle."

Mary, eldest daughter of John Lamotte, Esq., a gentleman residing at Basildon.

There had been a mutual attachment between them some years before it was made known to her family, and he had received as a *gage d'amour* from her, a lock of her hair. This revived his poetical ardour, and in the midst of Declarations, Demurrers, and Surrebutters, he *drew and settled*—

“THE ANSWER OF A LOCK OF HAIR TO THE INQUIRIES OF ITS FORMER MISTRESS.”

The reader may like to have two or three of the stanzas (or counts) as a *precedent* :

“Since first I left my parent stock,
How strangely alter'd is my state!
No longer now a flowing lock,
With graceful pride elate,
Upon the floating gale I rise
To catch some wanton rover's eyes.

“But close entwin'd in artful braid,
And round beset with burnish'd gold,
Against a beating bosom laid,
An office new I hold:
New powers assume, new aid impart,
And form the bulwark of a heart.”

The Lock goes on to describe a great discovery it had made while guarding the heart of her lover :

“For in this heart's most sacred cell,
By love enthron'd, array'd in grace,
I saw a fair enchantress dwell
The sovereign of the place:
And as she smil'd her power to view,
I straight my former mistress knew.

“Then, lady, cease your tender fears;
Be doubt dismiss'd! Adieu to care!
For sure this heart through endless years
Allegiance true will bear,
Since I all outward foes withstand,
And you the powers within command.”

It is said that while still practising as a special pleader under the bar he at last ventured to mention

the proposal to the lady's father. The old gentleman asking him "for a sight of his rentroll," not yet being able to boast of "a rood of ground in Westminster Hall," he exclaimed, "Behold my books and my pupils."

The marriage took place with her father's consent, and proved most auspicious. The married couple lived together harmoniously and happily for many years, although of very different dispositions. While he was

His wife. remarkably plain and simple in his attire, she was fond of finery, and according to the

prevailing fashion, she habitually heightened her complexion with a thick veneering of carmine. So little suspicious was he on such subjects that I doubt whether he did not exultingly say to himself, "her colour comes and goes." Once while paying me a visit in my chambers, in Paper Buildings, the walls of which were of old dark oak wainscot, he said, "Now, if my wife had these chambers, she would immediately *paint* them, and I should like them the better for it.

In the collection of his letters intrusted to me I find only one addressed to his wife, and this I have great pleasure in copying for my readers, as it places him in a very amiable point of view. Some years after his marriage, when he had been blessed with two hopeful children, being at Shrewsbury upon the circuit, he thus addressed her :

"Shrewsbury, March 27, 1798.

"MY DEAREST LOVE,

"I have just received and read your kind letter, which I had been expecting near half an hour. The inhabitants of any country but this would be astonished to hear that a letter can be received at the distance of 166 miles on the day after its date, and its arrival calculated within a few minutes.* As the invention of *paper* has now ceased to be a theme of rejoicing among poetical lovers, I recommend them to adopt the subject

* The rapidity of communication by the mail coach, then lately established, so much exciting his astonishment, what

would he have said had he lived to see Railroads and the Electric Telegraph?

of *mail coaches*. They have only to call a turnpike road a velvet lawn, and change a scarlet coat into a rosy mantle, and they may describe the vehicle and its journey in all the glowing colours of the radiant chariot of the God of Day. And that no gentleman or lady may despair of success in attempting to handle this new subject, I have taken the pains to write a few lines, which a person of tolerable ingenuity may work out into a volume :

'In rosy mantle clad, the God of Day
O'er heaven's broad turnpike wins his easy way
Yet soon as envious Night puts out his fires,
The lazy deity to rest retires.
But sure his robes with brighter crimson glow,
Who guides the mail-coach through the realms below,
And greater he who, fearless of the night,
Drives in the dark as fast as in the light.
Sweet is the genial warmth from heaven above;
But sweeter are the words of absent love.
Then cease, ye bards, to sing Apollo's praise,
And let mail-coachmen only fill your lays.'

"You see my verses are very stiff, but recollect that husbands deal more in truth than in poetry. In truth then I am very happy to hear that you, my dearest Mary, and our beloved little John, are so much better, and in truth I am very happy to think that the circuit is almost over, and that in a few days I shall embrace you both. Unless I am detained beyond my expectation I shall certainly have the pleasure of dining with you on Monday. Indeed I hope to get to Maidenhead on Sunday afternoon, and there step into one of the Bath coaches that arrive in town about eleven at night. I have brought a box of Shrewsbury cakes to treat the young gentleman when he behaves well after dinner.

"Adieu, my dearest Mary,
"Your faithful and affectionate husband,
"C. ABBOTT."

The following verses which I find in his handwriting, were probably enclosed in a letter from him to Mrs. Abbott while on the circuit at Hereford :

"In the noise of the bar and the crowds of the hall,
Tho' destined still longer to move,
Let my thoughts wander home, and my memory recall
The dear pleasures of beauty and love.
"The soft looks of my girl, the sweet voice of my boy,
Their antics, their hobbies, their sports;
How the houses he builds her quick fingers destroy,
And with kisses his pardon she courts.

"With eyes full of tenderness, pleasure, and pride,
The fond mother sits watching their play;
Or turns, if I look not, my dulness to chide,
And invites me like them to be gay.

"She invites to be gay, and I yield to her voice,
And my toils and my sorrows forget;
In her beauty, her sweetness, her kindness rejoice,
And hallow the day that we met.

"Full bright were her charms in the bloom of her life,
When I walked down the church by her side;
And, five years past over, I now find the wife
More lovely and fair than the bride.

"Hereford, Aug. 6, 1800."

His affection for her was warmly returned, and she continued very tenderly attached to him. Shortly before his assumption of the ermine, she expressed to me the deep anxiety she felt from a weakness in his eyes, discontent with the tardiness of Eldon in fulfilling

His desire
to be made
a Judge.

the promise to make him a Judge, and the pleasure she should have in consenting to his retirement from the profession altogether, if this would contribute to his comfort. They had lived ever since their marriage in a small house in Queen Square, Bloomsbury, giving a dinner to a few lawyers now and then,* and seeing no other company. He always contributed a dish to his own dinner table; for passing the fishmonger's on his way to Westminster, he daily called there and sent home what was freshest, nicest, and cheapest—trusting all the rest to her. Their union was blessed with four children—two sons and two daughters, and the whole household was ever remarkable for all that is excellent and amiable.

On the resignation of Mr. Justice Chambre, it was thought that Abbott's well-known desire to be made a Judge would have been gratified; but James Allan Park had been conducting very success-

He is dis-
appointed.

* One of the wise *saws* which I have given to guests judiciously selected, is heard him recite was, "A good dinner, money well spent."

fully some Government prosecutions on the Northern Circuit, to which much importance was attached, and his claims were pressed upon the Chancellor so importunately by Lord Sidmouth that they could not be resisted. Abbott and his family were deeply disappointed, and his health then rapidly declining, there were serious apprehensions that he would not be able to stand the fatigue of bar practice any longer, and that he must retire upon the decent competence which he had acquired. It is said that he himself was deliberating between Canterbury and Oxford as his retreat and that he had fixed upon the latter city, where he had always passed his time agreeably, whereas the recollections of the former were not the unmixed "pleasures of memory."

CHAPTER LIII.

CONTINUATION OF THE LIFE OF LORD TENTERDEN TILL HE WAS
ELEVATED TO THE PEERAGE.

OPPORTUNELY another vacancy in the Court of Common
He is a Pleas soon after arose from the sudden death
puisne in of Mr. Justice Heath, who, considerably
the Common Pleas. turned of eighty, made good his oft-declared
resolution "to die in harness."* Abbott was named to
succeed him, and being obliged to submit to the degree
of Serjeant-at-Law, he took the same motto which he
had modestly adopted for his shield when he first
indulged his fancy in choosing armorial bearings—
LABORE.

The following letter was written by him in answer to
congratulations from his old school-fellow—but it can-
not be trusted as disclosing the whole truth; for he was
ever unwilling to breathe any complaint against Lord
Eldon, even when he thought himself deeply aggrieved
by the selfishness of his patron:—

"Serjeants' Inn, Feb. 15, 1816.

"MY DEAR FRIEND,

"I have felt highly gratified by the receipt of your kind
letter and the warmth of your congratulations on my promotion
to the Bench. I can never forget how much my present station
is owing to your early friendship. The great object of my desire
and ambition is now attained: it has been attained at a time
when I had begun to be solicitous about it, as well on account
of my advancing age as of a complaint that has for some months
effected my eye-lids and made reading by candlelight very
inconvenient. The comparative leisure I now enjoy has, I think,

* Another peculiarity about him was, knighted; being likewise resolved to
that he never would submit to be die, as he did, "JOHN HEATH, Esq."

already been attended with some beneficial effect and an abatement of the complaint. If the offer had not come now, it might have come too late; if it had come much sooner, pecuniary considerations would not have allowed me to accept it. But, like all other men who have obtained the object of their pursuit, I am now beginning to feel the difficulties that belong to it—to tremble lest I should be found unequal to the discharge of the duties of my station from want of learning, or talents, or temper, or lest the *res* still *angusta domi* should not enable me to keep up the outward state that so high a rank in society requires, without injury to my family. These difficulties, small at a distance, like all others, now appear large to my view—the last of them larger, perhaps, than it ought, though the transition from an income exceeding present calls and daily flowing in, to one receivable at stated periods and of which the sufficiency is not quite certain, is attended with very unpleasant sensations. The employment of the mind, however, so far at least as my very short acquaintance with it enables me to judge, is far more agreeable. The search after truth is much more pleasant than the search after arguments. Some time may also be allowed to those studies which are the food of youth and the solace of age, but to which a man actively engaged in the profession of the law can only give an occasional and almost stolen glance. And some time may be allowed, too, for the discharge of the duties of domestic life, for the calls and the pleasures of friendship, and for that still more important task, the preparation for another world, to which we are all hastening. I have been told that some persons, on their promotion to the bench, have found their time hang heavy on their hands; but I cannot think this will ever be my own case.

“I have another subject of congratulation, for I am to go the Home Circuit, which I shall not have another opportunity of doing for many years. C. Wilyams has promised to be at Maidstone during the assizes. I hope he will not be the only old friend I shall meet there.*

“With best respects to Lady Brydges,

“I remain,

“My dear Sir Egerton,

“Your very faithful and affectionate friend,

“C. ABBOTT.”

He sat for a very short time as Judge in the Court of Common Pleas; but not a word which fell from him

* The vision of his fellow townsmen in the Crown Court, habited in scarlet and ermine, was about to be fulfilled.

there has been recorded, and had he remained there we should probably have known little more of him than the dates of his appointment and of his death in '*Beatson's Political Index*.' But he was unexpectedly

He is transferred to the King's Bench.

transferred to another sphere, where he gained himself a brilliant and a lasting reputation.

Of this change he gives an account in the following letter :—

"Queen Square, May 5th, 1816.

"MY DEAR SIR EGERTON,

"You have probably been already informed that I have been removed from the Common Pleas to the King's Bench. The change was greatly against my personal wishes on account of the very great difference in the labour of the two situations, which I estimate at no less than 400 hours in a year. I had hoped to pass the remainder of my life in a situation of comparative ease and rest ; but the change was pressed upon me in a way that I could not resist, though very unwilling to be flattered out of a comfortable seat. I hope you will not think I have done wrong.

"I remain,

"My dear Sir Egerton,

"Yours most sincerely,

"C. ABBOTT."

In his DIARY, begun November 3rd, 1822, but taking a retrospect of his judicial life, he explains that the true reason of his removal was that Lord Eldon wished to make a Judge of Burrough, who, from age and other defects, was not producible in the King's Bench, but might pass muster in the Common Pleas. Having stated how he at first refused and how Lord Ellenborough pressed him to agree, he proceeds :—"Upon this I went to Lord Chief Justice Gibbs, at his house at Hayes, in Kent, to consult him. I spoke of the state of my eyes. 'He said 'If a higher situation were offered to you, would you refuse it on that account?' I answered, 'I should not think myself justified toward my family in doing so, but my own ambition is quite satisfied' (as in truth it was). He replied, 'Then you must not let

that excuse prevent your removal.' After some further conference, in the course of which he expressed himself with great kindness in regard to losing my assistance in the Common Pleas, it was resolved that I should remove, and upon my return from Hayes I communicated to the Lord Chancellor that I was willing to remove. This account of my removal to the King's Bench may serve as an example of the maxim that to do right is the greatest wisdom—even the greatest worldly wisdom. It was right that I should remove into the King's Bench, and I ought to have done so at the first proposal from the Lord Chancellor; but I preferred Gibbs, C. J. to Lord Ellenborough, as I had a right to do from long acquaintance and many acts of kindness. I preferred my ease to the wish of the Chancellor, for I might have understood his proposal to contain his wish, though he would not tell me so. This I had no right to do, for I owed everything to him and his kindness. As soon as I removed I felt satisfied with myself, though I may truly say I did not by any means expect the consequence that followed two years and a half afterwards. But if I had not removed into the King's Bench, I think it certain that I should not have been placed at the head of that Court."

On Friday, the 3rd of May, 1816, Mr. Justice Abbott took his seat in the Court of King's Bench, along with Lord Ellenborough, Mr. Justice Bayley, and Mr. Justice Holroyd*—and he officiated there as a Puisne Judge till Michaelmas Term, 1818. Never having led at *Nisi Prius*, and having been accustomed to attend to detached points as they arose, rather than to take a broad and comprehensive view of the merits of the cause, he at first occasioned considerable disappointment among those who were prepared to admire him; but he gradually and steadily improved, and before the

* 6 Taunton, 516; 5 Maule and Selwyn, 2.

expiration of the second year he gave decided proof of the highest judicial excellence. The complaints made against him were, that in spite of efforts at self-control, his manner to *boring* barristers was sometimes snappish; that he showed too much deference to the Chief Justice; above all, that in some political prosecutions, although his demeanour was always decorous, and he said nothing that could be laid hold of as misdirection or misrepresentation, he betrayed an anxiety to obtain a verdict for the Crown. Lord Ellenborough's health was seriously declining, and in those days there was still a strong disposition in the Government to repress free discussion and to preserve tranquillity by a very rigorous enforcement of the criminal law—a disposition which soon after ceased, when Peel became Home Secretary and Copley Attorney-General. The malicious insinuated that an aspiring puisne was trying for the Collar of SS by "a mixture of good and evil arts." He himself was so profoundly reserved that he might have been acting upon this plan without having disclosed it to his own mind.

I happened to be much in his company during the long vacation of 1816. In consequence of a serious illness, then being a desolate bachelor, I had retired to a lonely cottage at Bognor, on the coast of Sussex, and Mr. Justice Abbott taking up his residence there with his family, he was exceedingly kind to me. In our walks he talked of literature much more than of law, and he would beautifully recite long passages from the Greek and Latin classics, as well as from Shakespeare, Milton, and Dryden. For all modern English poetry he expressed infinite contempt. When I ventured to stand up for brilliant passages in Byron, he only exclaimed—

"Unus et alter
Assultur pannus!"

Yet he was himself still sometimes inspired by the

Muse. While we remained at Bognor, the Channel was visited by a tremendous tempest, which he celebrated by the following

"Sonnet to the South-West Gale."

"Perturbed leader of the restless tide,
That from the broad Atlantic swept away,
Here mingles with the clouds its lofty spray,
As if it would the narrow limits chide
That Albion from her neighbour Gaul divide—
Relentless South-West! curb thy angry sway,
Ere yet the swelling billows' fierce array
Close o'er yon shattered bark's devoted side!
The melancholy signal sounds in vain;
The crew, desponding, eye the distant shore;
Calm, ere they perish, calm the troubled main,
The placid sea and sky serene restore;
And be thou welcom'd in the poet's prayer,
God of the balmy gale and genial air!"

In the autumn of 1818 there was a great excitement in the legal world. Lord Ellenborough had had a paralytic seizure, and it was certain that he could never sit again. Sir Samuel Shepherd, the Attorney-General, although an excellent lawyer as well as a very able and honourable man, was so deaf that he could not with propriety accept any judicial office which required him to listen to parol evidence, or to *vidé voce* discussion. Sir Robert Gifford had been recently promoted to be Solicitor-General, from a rather obscure position in the profession, and he could not as yet with propriety be placed at the head of the common law. Sir Vicary Gibbs was looked to, having a great legal reputation, and being in the highest favour with the Government; for from Attorney-General, he had successively been made a puisne Judge, Chief Baron of the Exchequer, and Chief Justice of the Common Pleas; but the hand of death was now upon him. Who was to be Chief Justice of England? Lord Ellenborough strongly recommended Mr. Serjeant Lens, a most honourable man, an accomplished scholar, and a very pretty lawyer,—and he was for some time the favourite.

He becomes
Chief Justice
of England.

I well remember one morning in the end of October, 1818, about a fortnight after Lord Ellenborough's death, when the puisne Judges of the King's Bench were assembled at Serjeants' Inn for the hearing of special arguments in what was called the "Three Cornered Court," it was announced that Abbott was certainly to be Chief Justice. Nothing discredited the assertion except that his own manner was tranquil and listless, and that he was observed several times to yawn, seemingly against his will. Some alleged that the news might be true, as he was only acting a part—and others, who knew him better, explained what they beheld by his habitual want of animal spirits and the collapse after long and painful anxiety.

At the rising of the Court he accepted our congratulations on his appointment, and on the 4th of November, fourteen years to a day before his own death, he actually appeared in Court at Westminster wearing the Chief Justice's golden chain.

His family expected to see at the same time his brows encircled with a coronet, for ever since Lord Mansfield's elevation in 1756, the Chief Justice of the King's Bench had been ennobled on his appointment. This distinction was withheld from Chief Justice Abbott for nine years; but without such adventitious aid he won the highest respect of the public (as Holt had done) by the admirable discharge of his judicial duties.

The following letter from him to Sir Egerton Brydges, who had calculated upon a peerage being at once conferred upon him, fully explains what then took place, and his own views upon the subject:—

“ Russell Square, Jan. 17th, 1819.

“ MY DEAR SIR EGERTON,

“ I thank you most heartily for your very affectionate letter, and assure you I do not doubt the sincerity of your warm and kind expressions. It is well that you waited no longer in

expectation of seeing my promotion to the peerage announced. Such an event is neither probable nor desirable. When the Lord Chancellor told me he was authorized by the Prince Regent to propose the office of Chief Justice to me, he said he was also directed by His Royal Highness to acquaint me that it was not the intention of His Royal Highness to confer a peerage upon the person who should take the office, whoever he might be. My answer was, that the latter part of his sentence relieved me from the only difficulty I could have had in answering the first. I was willing to take the office, but neither the state of my fortune nor that of the office would allow me to take a peerage according to my views of expediency and justice to my family. All the offices in the gift of the Chief Justice, and which make his office a means of providing for a family, are now held by the families of my predecessors upon lives which I can never expect to survive. My emoluments will fall far short of two-thirds of those which Lord Ellenborough enjoyed for many years past. Under such circumstances, I should be most unwilling to accept an hereditary honour, and I think myself fortunate in having a family, of which no one member is desirous of such a distinction. I have written so much about myself and my own situation, because I know that you wish to hear of them. It is a subject of deep regret to me that I receive your congratulations on my promotion from a distant country . . .

"Whatever you are and whatever you do, may health and comfort attend you!"

The far happiest part of my life as an advocate I passed under the auspices of Chief Justice Abbott. From being a puisne, it was some time before he acquired the ascendancy and the *prestige* which for the due administration of justice the Chief ought to enjoy,—and while Best remained a member of the Court, he frequently obstructed the march of business. But when this very amiable and eloquent, although not very logical, Judge had prevailed upon the Prince Regent to make him Chief Justice of the Common Pleas, the King's Bench became the *beau idéal* of a court of justice. Best was succeeded by Littledale, one of the most acute, learned, and simple-minded of men. For the senior puisne we had Bayley. He did not talk very wisely on

Extraordinary excellence of the King's Bench as a Court of Justice while he presided over it.

literature or on the affairs of life, but the whole of the common law of this realm he carried in his head and in seven little red books. These accompanied him day and night; in these every reported case was regularly posted, and in these, by a sort of magic, he could at all times instantaneously turn up the authorities required. The remaining puisne was Holroyd, who was absolutely born with a genius for law, and was not only acquainted with all that had ever been said or written on the subject, but reasoned most scientifically and beautifully upon every point of law which he touched, and, notwithstanding his husky voice and sodden features, as often as he spoke he delighted all who were capable of appreciating his rare excellence. Before such men there was no pretence of being lengthy or importunate. Every point made by counsel was understood in a moment, the application of every authority was discovered at a glance, the counsel saw when he might sit down, his case being safe, and when he might sit down, all chance of success for his client being at an end. I have practised at the bar when no case was secure, no case was desperate, and when, good points being overruled, for the sake of justice it was necessary that bad points should be taken; but during that golden age law and reason prevailed—the result was confidently anticipated by the knowing before the argument began,—and the judgment was approved by all who heard it pronounced,—including the vanquished party. Before such a tribunal the advocate becomes dearer to himself by preserving his own esteem, and feels himself to be a minister of justice, instead of a declaimer, a trickster, or a bully. I do not believe that so much important business was ever done so rapidly and so well before any other Court that ever sate in any age or country.

Although the puisnes deserve all the praise that I have bestowed upon them, yet the principal merit is, no

doubt, due to Abbott, and no one of them could have played his part so well. He had more knowledge of mankind than any of them, and he was more skilful as a moderator in forensic disputation. He was not only ever anxious, for his own credit, that the business of the Court should be despatched, but he had a genuine love of law and of justice which made him constantly solicitous that every case should be decided properly. His pasty face became irradiated and his dim eye sparkled if a new and important question of law was raised; and he took more interest in its decision than the counsel whose fame depended upon the result. Though a most faithful trustee of the public time, insomuch that he thought any waste of it was a crime and a sin, he showed no marks of impatience, however long an examination or a speech might be, if he really believed that it assisted in the investigation of truth, and might properly influence the jury in coming to a right verdict.

The language in which he clothed his statements and decisions was always correct, succinct, idiomatic, and appropriate, and he would not patiently endure conceit or affectation in the language of others. He was particularly irate if a common *shop* was called a *warehouse* by its owner, or the *shopman* dubbed himself an *assistant*. A gentleman pressing into a crowded court, complained that he could not get to his counsel. *Lord Tenterden*: "What are you, Sir?" *Gentleman*: "My Lord, I am the plaintiff's solicitor." *Lord Tenterden*: "We know nothing of *solicitors* here, Sir. Had you been in the respectable rank of an *attorney*, I should have ordered room to be made for you."* A country apothecary, in

His great
merit as a
Judge.

* When in 1850 I returned to Westminster Hall, after an absence of nine years, I found that the *Attorneys* had almost all grown into *Solicitors*; and the more expedient course now would

probably be entirely to abolish the word *attorney*, although it denotes the representative character of the forensic agent much more appropriately than the favourite word *Solicitor*.

answer to some plain questions, using very unnecessarily high-sounding medical phraseology, the Chief Justice roared out, "Speak English, Sir, if you can, or I must swear an interpreter."

There were heavy complaints against him at *nisi prius*, that when a fact had been proved by one witness, he reprimanded the counsel for calling another to prove it over again,—that he was angry when a witness was cross-examined as to the facts sworn by him when examined in chief,—and that he appealed to the evidence he had written down in his note book as if it were a special verdict upon which the cause was to be decided—forgetting that everything might depend upon the impression made by the evidence upon the minds of the jury and the credit they might give to the witnesses. There is no denying that occasionally he was rather irritable and peevish, and showed in his manner a want of good taste and of good breeding. When a third or fourth counsel rose to address him, following able leaders, he would sneeringly exclaim, "I suppose we are now to hear what is to be said *on the other side*," although it might be the maiden effort of a trembling junior; and he too often forgot the remark of Curran, when reproached for too much forbearance on becoming Master of the Rolls, "I do not like to appear in the character of a drill-sergeant, with my cane rapping the knuckles of a private, when I am raised from the ranks to be a colonel."

Although he behaved very courteously to the other puisnes, he could not always conceal his dislike to brother Best. That learned Judge, in trying a defendant for a blasphemous libel, had thrice fined him for very improper language in addressing the jury—20*l.* for saying to the Judge when reproved, "My Lord, if you have your dungeon ready, I will give you the key"—40*l.* for saying that "the Scriptures were ancient tracts con-

taining sentiments, stories, and representations totally derogatory to the honour of God, destructive to pure principles of morality, and opposed to the best interests of society"—and the like sum of 40*l.* for saying very irreverently, but one would have thought less culpably, "The Bishops are generally sceptics." A motion being made for a new trial on the ground that the defendant had been improperly interrupted in making his defence, Abbott, C. J., recognised the power of fining for a contempt, and intimated an opinion that the exercise of it on this occasion had not really debarred the defendant from using any arguments which could have availed him, but sneered at the tariff of pecuniary mulcts, and pretty plainly intimated that he himself should have pursued a different course.*

The only grave fault which could be justly imputed to Chief Justice Abbott was, that he allowed himself to fall under the dominion of a His sub-
section under
a favourite
counsel. favourite. A judge is in danger of having such a charge brought against him from one counsel in his court being much more employed than any other, and being almost always retained by plaintiffs, who in a large proportion of causes succeed. This may prove a palliation for Abbott, but by no means an entire exculpation. Sir James Scarlett had been his senior at the bar, and when they were in the same cause on the same side, had often snubbed him, without permitting him to examine an important witness, and hardly even to open his mouth upon a point of law. The timid junior, become Chief Justice, still looked up to his old leader with dread, was afraid of offending him, and was always delighted when he could decide in his favour. The most serious evil arising from this

* *Rex v. Davison*, 4 B. and A. 33. It should be noted that Best, who, though a passionate, was an exceedingly good-natured man, had himself remitted the fines before the Court rose.

ascendancy was when Scarlett conducted criminal prosecutions before Abbott, and, above all, prosecutions for conspiracy. In a long sequence of these in which there had been convictions, the Court granted new trials, on the ground that the verdict was not supported by the evidence.

"This acute and dexterous lawyer," it has been said, "used to confirm his evidence by well-timed delicate flattery. Having moved for a new trial for misdirection, he prefaced his motion with the explanatory remark that he had taken an accurate note of the summing up, which he only did when he conceived there was a misconception on the part of the Judge—which did not happen with regard to his Lordship three times a year. The Chief Justice was evidently gratified, and observed with a smile, 'I fear, Mr. Scarlett, that you do not take notes as often as you ought to do.'"^{*}

The bar evinced a jealous sense of the ascendancy of the favourite. On one occasion when, with the seeming approbation of the Chief Justice, Scarlett had said, in an altercation with Mr. Adolphus, who practised chiefly in the Criminal Courts, "There is a difference between the practice here and at the Old Bailey;" his antagonist retorted, to the delight of his brethren, "I know there is. The Judge there rules the advocate; here, the advocate rules the Judge."

The following letter from the Chief Justice to Sir Egerton Brydges, after some remarks upon Oct. 17, 1818. Lord Eldon, Lord Giffard (then Attorney General), and Lord Lyndhurst (then Solicitor-General), enters with extraordinary freedom into his own judicial character:—

"The Chancellor, who has done more work than any living lawyer, perhaps than any deceased, is, I verily believe, and has

^{*} Townsend's Lives, ii. 263.

for some time been, desirous of resigning, but kept in his place from the difficulty of filling it up, and from the King's personal desire. The present Attorney-General will probably be his successor: he is a good lawyer and a sound-headed man; warm rather than vigorous, and without dignity of person or manner. Yet I think he is the fittest man living to succeed one for whom a successor must soon be found—though perhaps an equal never will be. The Solicitor-General is probably very little known to you, though I think you have sat with him in the House of Commons. He has less learning than the Attorney-General, but a much better person, countenance, and manner; a good head and a kind heart, and not deficient in learning. I suppose he will soon fill one of our high offices in the law.

"Of myself I have really scarce anything to say. My health is good, and my spirits are generally good. I go through my work as well as I can, though certainly not without some anxieties and some crosses. I scarcely know whether the extreme caution that the prevailing spirit of cavil and misrepresentation imposes on a Judge be fortunate or unfortunate for his future reputation—it is certainly unfortunate for his comfort; a bridle in the mouth with a sharp curb is not a very pleasant attire, yet in these times at least it is very necessary. I generally study to say as little as possible from the Bench, and to confine myself closely to the very point before me, not hazarding allusions or illustrations in which I know much wiser men have often failed. How far I succeed others may better judge. I am sure many of my decisions, when I read them in the Reports, are at least as dry and jejune as may well be tolerated. Lord Mansfield indulged himself in illusions and illustrations: his opinions are said to have produced a great effect on the majority of those who heard him; they are not well reported by Burrow—at least, few of them read well to a lawyer. His taste for illustration was not fortunate. His opinion is often right when his illustrations are not right. Dr. Jackson (Dean of Christ Church) knew him well and privately, and often talked with me about him. We agreed upon his talents and character. They were plausible and showy, and not unsuited to the age. He certainly did much for the mercantile law, and not a little for the law in general, by breaking down the barrier of what are usually called forms; but in this he sometimes went too far. The preservation of forms, however unpopular, is of the essence of all establishments—of the judicial in particular—for if judges disregard them, they become authors and not expounders of law. The great art of a lawyer is to understand them. If a judge does not understand them, he will violate the law in a few instances by breaking them; and if of a cautious temper, do

injustice in many by a mistaken adherence to their supposed effect: the latter has been the most common error. The less a Judge knows of special pleading, the more nonsuits take place under his direction. Buller told me so many years ago, and experience has shown the truth of his assertion. You must forgive all this from an old Special Pleader."

His discretion in avoiding disputes about jurisdiction. I have anxiously looked through this Chief Justice's judgments with a view to select some which might interest the general reader, but have met with sad disappointment. They are all excellent for the occasion, but I find none that are very striking. It so happened, that while he presided in the Court of King's Bench there were hardly any State trials, and no great constitutional question arose, such as "general warrants," or "the right of juries to consider the question of libel or no libel," or "whether a court of law is to limit the privileges of the two Houses of Parliament." With admirable tact and discretion he avoided any attempt to extend the jurisdiction of his own Court; and he never once got into collision with any other Court or any other authority in the State. He was cautious likewise in restraining the prerogative writs to their proper purposes.

A motion being made before him for a prohibition to the Lord Chancellor sitting in bankruptcy: after showing that upon the facts disclosed the Lord Chancellor had done nothing amiss, he added, "We wish not to be understood as giving any sanction to the supposed authority of this Court to direct such a prohibition. It will be time enough to decide the question when it arises—if ever it shall arise, which is not very probable, as no such question has arisen since the institution of proceedings in bankruptcy—a period little short of three hundred years. If ever the question shall arise, the Court, whose assistance may be invoked to

correct an excess of jurisdiction in another, will without doubt take care not to exceed its own." *

I know not that I can offer a fairer specimen of his judgments than that given by him in *Blundell v. Catterall*, where the question arose, whether there be a common law right for all the King's subjects to bathe in the sea; and, as incident thereto, of everywhere crossing the sea-shore on foot or in bathing machines for that purpose. Best, J., strenuously supported the right, and thus was he answered:—

His decisions—The public have no common law right to the use of the sea-shore for bathing.

Abbott, C. J.: "I have considered this case with very great attention, from the respect I entertain for the opinion of my brother Best, though I had no doubt upon the question when it was first presented to me; nor did the defendant's counsel raise any doubt in my mind by his learned and ingenious argument. 'This is an action of trespass brought against the defendant for passing with carriages from some place above high-water mark across that part of the shore which lies between the high and low-water mark, for the conveyance of persons to and from the water for the purpose of bathing. The plaintiff is the undoubted owner of the soil of this part of the shore, and has the exclusive right of fishing thereon with stake-nets. The defendant does not rely on any special custom or prescription for his justification, but insists on a common-law right, for all the King's subjects to bathe on the sea-shore, and to pass and repass over it for that purpose on foot, and with horses and carriages. Now, if such a common-law right existed, there would probably be some mention of it in our books; but none is found in any book, ancient or modern. If the right exist now, it must have existed at all times; but we know that sea-bathing was, until a time comparatively modern, a matter of no frequent occurrence, and that the carriages, by which the practice has been facilitated and extended, are of very modern invention.

"There being no authority in favour of the affirmative of the question in the terms in which it is proposed, it has been placed in argument at the bar on a broader ground; and as the waters of the sea are open to the use of all persons for all lawful purposes, it has been contended, as a general proposition, that there must be an equally universal right of access to them for all such purposes overland, such as the plaintiff's, on which the alleged

* *Ex parte Cowan*, 3 B. and A. 123.

trespasses have been committed. If this could be established, the defendant must undoubtedly prevail, because bathing in the waters of the sea is, generally speaking, a lawful purpose. But in my opinion there is no sufficient ground, either in authority or in reason, to support this general proposition. Bracton, in the passage referred to, speaks not of the waters of the sea generally, but of ports and navigable rivers; and as to ports, Lord Hale distinguishes between the interest of property and the interest of franchise; and says, that if A. hath the *ripa* or bank of the port, the King cannot grant liberty to unlade on the bank or *ripa* without his consent, unless custom hath made the liberty therefore free to all, as in many places it is. Now, such consent, as applied to the natural state of the *ripa* or bank, would be wholly unnecessary if any man had a right to land his goods on every part of the shore at his pleasure. If there be no general right to unlade merchandise on the shore, there can be no right to traverse the shore with carriages or otherwise for the purpose of unloading; and consequently, the general proposition to which I have alluded cannot be maintained as a legitimate conclusion from the general right to navigate the water. One of the topics urged at the bar in favour of this supposed right was that of public convenience. Public convenience, however, is in all cases to be viewed with a due regard to private property, the protection whereof is one of the distinguishing characteristics of the law of England. It is true, that property of the description of the present is in general of little value to its owner; but I do not know how that little is to be respected, and still less how it is ever to be increased, if such a general right be established. How are stake-nets to be lawfully fixed on the beach? By what law can any wharf or quay be made? These, in order to be useful, must be below the high-water mark. In some parts of the coast where the ground is nearly level the tide ebbs to a great distance, and leaves dry very considerable tracts of land. In such situations thousands of acres have, at different times, been gained from the sea by embankments, and converted to pasture or tillage. But how could such improvements have been made, or how can they be made hereafter, without the destruction or infringement of this supposed right? And it is to be observed, that wharfs, quays, and embankments, and intakes from the sea, are matters of public as well as private benefit. I am not aware of any usage in this matter, sufficiently extensive or uniform, to be the foundation of a judicial decision. In many places, doubtless, nothing is paid to the owner of the shore for leave to traverse it. In many places the King retains his ownership, and it is not probable that he should offer any obstruction to those who, for recreation, wish to walk, or ride, or drive along

the sands left by the receding tide. Of private owners, some may not have thought it worth while to advance any claim or opposition; others may have had too much discretion to put their title to the soil to the hazard of a trial by an unpopular claim to a matter of little value; others, and probably the greater number, may have derived or expected so much benefit from the increased value given to their enclosed land by the erection of houses and the resort of company, that their own interest may have induced them to acquiesce in, and even to encourage the practise as a matter indirectly profitable to themselves. Many of those who reside in the vicinity of inland wastes and commons walk and ride on horseback in all directions over them for health and amusement, and sometimes even in carriages, deviate from the public paths into those parts which may be so traversed with safety. In the neighbourhood of some frequented watering-places this practice prevails to a very great degree; yet no one ever thought that any right existed in favour of this enjoyment, or that any justification could be pleaded to an action at the suit of the owner of the soil. The defendant finally says, that the right may be considered as confined to those localities where it can be exercised without actual prejudice to the owner of the shore, and subject to all modes of present use or future improvement on his part. No instance of any public right so limited and qualified is to be found. Every public right to be exercised over the land of an individual is *pro tanto* a diminution of his private rights and enjoyments, both present and future, so far as they may at any time interfere with or obstruct the public right. But shall the owner of the soil be allowed to bring an action against any person who may drive a carriage or walk along any part of the sea-shore, although not the minutest injury is done to the owner? The law has provided suitable checks to frivolous and vexatious suits, and experience shows that the owners of the shore do not trouble themselves or others about such trifles. But where one man endeavours to make his own special profit by conveying persons over the soil of another, and claims a public right to do so, as in the present case, it does seem to me that he has not any just reason to complain if the owner of the soil shall insist on participating in the profit, and endeavour to preserve the evidence of the private right which has belonged to him and his ancestors. For these reasons I am of opinion that there is not any such common-law right as the defendant has claimed; and my brothers Bayley and Holroyd agreeing with me, there must be judgment for the plaintiff.*

In the following judgment Chief Justice Abbott held

* *Blundell v. Catterall*, 5 Barn. and Ald., 268-316.

that the author or publisher of an immoral book cannot maintain an action for pirating it.

No action lies for pirating an obscene book.

"This was an action brought for the purpose of recovering a compensation in damages for the loss alleged to have been sustained from the publication of a copy of a book which had been first published by the plaintiff. At the trial it appeared that the work professed to be a history of the amours of a courtesan, that it contained in some parts matter highly indecent, and in others matter of a slanderous nature upon persons whose supposed adventures it narrated. The question, then, is whether the first publisher can claim a compensation in damages for a loss sustained by an injury done to the sale of such a work. In order to establish such a claim he must in the first place show a right to sell, for if he has not that right, he cannot sustain any loss which the law will recognise by an injury to the sale. Now, I am certain no lawyer can say that the sale of each copy of this work is not an offence against the law. How, then, can we hold that by the first publication of such a work a right of action can be given against any person who afterwards publishes it? It is said that there is no decision of a court of law against the plaintiff's claim. But upon the plainest principles of the common law, founded as it is, where there are no authorities, upon common sense and justice, this action cannot be maintained. It would be a disgrace to the common law if a doubt could be entertained upon the subject; but I think no doubt can be entertained, and I want no authority for pronouncing such a judicial opinion." *

His defence of the English doctrine of high treason.

Thus he pointedly defended our peculiar doctrine of high treason, which constitutes the offence in the *intention*, but requires this intention to be manifested by an *act*. "The law has wisely provided (because the public safety requires it) that in cases of this kind which manifestly lead to the most extensive public evil, the intention

* Stockdale v. Onwhyn, 5 Barn. and Cr. 175. This principle is perfectly sound, but there must be great difficulty in acting upon it. Judges and juries may be much divided as to whether the authors of such novels as 'Tom Jones' and 'Peregrine Pickle' ought to be allowed to maintain an action for pirating

their works. Lord Eldon refused an injunction against the piracy of a poem dedicated by Lord Byron to Walter Scott, on the ground of its being atheistical, although it is generally considered to be no more liable to that charge than 'Paradise Lost.'

shall constitute the crime ; but the law has at the same time with equal wisdom provided (because the safety of individuals requires it) that the intention shall be manifested by some act tending towards the accomplishment of the criminal object." *

Although he saw more distinctly the evils than the benefits arising from the freedom of the press, he laid down the law of libel always with calmness and decorum. Soon after the accession of George IV. a criminal information was filed by the Attorney-General (not very discreetly) against the proprietor and printer of a newspaper for the following paragraph:—"Attached as we sincerely and lawfully are to every interest connected with the Sovereign or any of his illustrious relatives, it is with the deepest concern we have to state that the malady under which his Majesty labours is of an alarming description, and may be considered hereditary. It is from authority we speak." At the trial before Abbott, C. J., at Guildhall, the counsel for the defendants admitted that the paragraph complained of imported that the King laboured under insanity, and that this assertion was untrue, but insisted that the defendants believed the fact to be as they stated it, and that they were not criminally answerable, as there had previously been strong public rumours to the same effect.

Libellous to say falsely that the Sovereign is afflicted with insanity.

Abbott, C. J.: "To assert falsely of his Majesty or of any other person that he labours under the infliction of mental derangement is a criminal act. It is an offence of a more aggravated nature to make such an assertion concerning his Majesty than concerning a subject, by reason of the greater mischief which may thence arise. It is distinctly admitted by the counsel for the defendants that the statement in the libel was false in fact, although they allege that rumours to the same effect had been previously circulated in other newspapers. Here the writer of this article does not seem to found himself upon


* State Tr. vol. xxxiv.—Thistlewood's Case.

existing rumours, but purports to speak from authority; and inasmuch as it is now admitted that the fact did not exist, there could be no authority for the statement. In my opinion the publication is a libel calculated to vilify and scandalise his Majesty, and to bring him into contempt among his subjects. But you have a right to exercise your own judgment upon the publication, and I invite you to do so."

After the jury had retired about two hours, they returned into Court, and said they wished to have the opinion of the Lord Chief Justice "whether it was or was not necessary that there should be a malicious intention to constitute a libel?"

Abbott, C. J.: "The man who publishes slanderous matter in its nature calculated to defame and vilify another, must be presumed to have intended to do that which the publication is calculated to bring about, unless he can show the contrary, and it is for him to show the contrary."

The jury, having again retired for three hours, returned a verdict of GUILTY, but recommended the defendants to mercy. Brougham and Denman moved for a new trial on account of the Judge's direction, and more particularly for his having told the jury that they (the counsel) had admitted the statement in the libel to be *false in fact*, using that word to denote a criminal untruth; whereas they had only admitted the statement to be untrue, the defendants believing it to be true, and an untrue statement may be made with perfect innocence and good faith. Bayley and Holroyd having said that the direction was unexceptionable, Best added, "Whether a publication be true or false is not the subject of inquiry in the trial of an information for a libel, but whether it be a mischievous or innocent paper. We are not called upon to decide whether the defendants would have been justified had the statement been true. But it must not be taken for granted that if such a dreadful affliction had happened to the country as the insanity of the King, the editor



of a newspaper would be justified in publishing an account of it at any time and in any manner that he thought proper. It is fit that the time and mode of such a communication should be determined on by those who are best able to provide against the effects of the agitation of public feeling which it is likely to produce. Such a communication rashly made, although true, might raise an inference of mischievous intention, for truth may be published maliciously."

Abbott, C. J.: "My learned brothers having delivered their opinion that nothing which fell from me in my address to the jury furnishes sufficient ground for granting a new trial, I will merely add that unless malicious intent may be inferred from the publication of the slander itself in a case where no evidence is given to rebut that inference, the reputation of all his Majesty's subjects, high and low, would be left without that protection which the law ought to extend to them. I will say further, with regard to the particular expression contained in this publication, that if any writer thinks proper to say that *he speaks from authority* when he informs his readers of a particular fact, and it shall turn out that the fact so asserted is untrue, I am of opinion that he who makes the assertion in such a form may be justly said to make a false assertion. I am not a sufficient casuist to say that to call it *an untrue assertion* would be a more proper form of expression."*

After the transfer of Best to preside in the Common Pleas there was hardly ever a difference of opinion among the Judges of the King's Bench, but strange to say, on one question which seems very plain and easy, they were divided equally, although all actuated by singleness of purpose to decide rightly. A gentleman residing in London hired of a public stable-keeper a pair of horses to draw his carriage for a day, and the owner of the horses provided the driver. Through the negligence of the coachman in driving, the carriage struck a horse belonging to a stranger.

Q. Whether the person who hires horses, with a driver, to draw his carriage for a day, is liable for the negligence of the driver?

* *Rex v. Harvey and another*, 2 Barn. and Cr., 257.

The question was whether the owner of the carriage was liable to be sued for this injury? The Chief Justice, before whom the cause was tried, thought that he was not, and directed a nonsuit. On an application to the Court to set aside the nonsuit, Bayley and Holroyd held that the driver was *pro hac vice* the servant of the owner of the carriage, although let for the day, with the horses, by the owner of the horses.

Abbott, C. J.: "I must own that I cannot perceive any substantial difference between hiring a pair of horses to draw my carriage about London for a day, and hiring them to draw it for a stage on a road I am travelling, the driver being in both cases furnished by the owner of the horses in the usual way, although in the one instance he is called a coachman and in the other a post-boy. Nor can I feel any substantial difference between hiring the horses to draw my own carriage on these occasions and hiring a carriage with them of their owner. If the temporary use and benefit of the horses will make the hirer answerable, and there being no reasonable distinction between hiring them with or without a carriage, must not the person who hires a hackney-coach to take him for a mile or other greater or less distance, or for an hour or longer time, be answerable for the conduct of the coachman? Must not the person who hires a wherry on the Thames be answerable for the conduct of the waterman? I believe the common sense of all men would be shocked if any one should affirm the hirer to be answerable in either of these cases."

Littledale, J., concurred in this opinion, and the nonsuit stood.*

Chief Justice Abbott in his addresses from the Bench never aimed at eloquence or epigram, but he showed himself master of a nervous style which rose in dignity with the occasion. In opening the commission for the trial of the Cato Street

The Cato Street conspiracy.

* *Laugher v. Pointer*, 5 B. and C. 547. By the Common Law Procedure Act, where the Judges are divided, the case now goes by appeal to a Court of Error. — Lord Abinger, Chief Baron, afterwards ruled that the liability under such circumstances is not a question of law, and

that it is for the jury to say whether the driver, when the accident happened, was the servant of the person who has taken the horses to hire, or has let them to hire. *Brady v. Giles*, 1 Moody and Robinson, 494.

conspirators, a set of low desperate men who had laid a plot to assassinate all the cabinet ministers, and then to seize upon the government, he thus cautioned the Grand Jury against incredulity on account of the improbability of the statements which might be made by the witnesses :—

“Such ulterior designs, if they shall appear to be of the nature to which I have alluded, and to relate to the usurpation of the government in opposition to the constituted authorities of the realm even for a season, will appear to the calm eye of sober reason to be wild and hopeless. But you, gentlemen, know that rash and evil-minded men, brooding over their bad designs, gradually lose sight of the difficulties that attend the accomplishment of their schemes, and magnify the advantage to be derived from them. And as it is the natural propensity of the vicious to think others no less vicious than themselves, those who form wicked plans of a public nature easily believe that they shall have numerous supporters, if they can manifest at once their designs and their power by striking some one important blow.”

To prepare the minds of the Grand Jury for the evidence of spies and accomplices, he added :—

“This belief leads in some instances to a rash and hasty communication of the wicked purpose to others who are thought likely to adopt it and join in its execution, but who, in fact, are not prepared to do so, and thereby occasionally furnishes the means of detection. Dark and deep designs are seldom fully developed except to those who consent to become participators in them, and can therefore be seldom exposed and brought to light by the testimony of untainted witnesses. Such testimony is to be received on all occasions with great caution; it is to be carefully watched, deliberately weighed, and anxiously considered. He who acknowledges himself to have become a party to a guilty purpose does by that very acknowledgment depreciate his own personal character and credit. If, however, it should ever be laid down as a practical rule in the administration of justice that the testimony of accomplices should be rejected as incredible, the most mischievous consequences must necessarily ensue; because it must not only happen that many heinous crimes must pass unpunished, but great encouragement will be given to bad men by withdrawing from their minds the

fear of detection and punishment through the instrumentality of their partners in guilt, and thereby universal confidence will be substituted for that distrust of each other which naturally possesses men engaged in wicked projects, and which often operates as a restraint against the perpetration of offences to which the co-operation of a multitude is required."

In passing sentence of death upon the prisoners, he thus moralised the same theme:—

"It has happened to you on the present occasion, as to many others before you, that the principal instruments by which you were brought to justice are persons who have partaken in your own guilty design. I trust that this circumstance will have its due weight in the consideration of all who shall become acquainted with your fate, and that they will ever for the sake of their own personal safety, if they cannot be influenced by any higher consideration, be induced to abstain from those evil combinations which have brought you into the melancholy situation in which you now stand. That Englishmen, laying aside the national character, should assemble to destroy in cold blood the lives of fifteen persons unknown to them, except from their having filled the highest offices in the State, is without example in the history of this country, and I hope will remain unparalleled for atrocity in all future times."

Our Chief Justice, however, tarnished the fame which he might have carried off without a shade from his dignified, impartial, and firm demeanour during these trials, by imprudently making an order that there should be no publication of any part of the proceedings till they were all concluded, and by fining the proprietor of a newspaper 500*l.* for publishing an account of the first trial before the second had begun. The Courts upheld the power to make the order and to enforce it by fine, but such a mode of proceeding has never since been attempted, the sound opinion being that the delay of publication is not desirable, even if it could practically be insured, and that the newspapers may be considered as indefinitely enlarging the dimensions of

Improper proceeding in trying to forbid the publication of trials for treason till they are all concluded.

the Court so as to enable the whole nation to see and hear all that passes—between the arraignment of the prisoner and his condemnation or acquittal.

I ought to record for the credit of this Chief Justice, and for the imitation of his successors, that while he maintained forms necessary to guard against fraud and to protect innocence, he had not the passion for technical objections by which justice is sometimes defeated. An indictment charged “that Mary Somerton, on a day and at a place named, being then and there servant to one Joseph Hellier, on *the same day* there stole his goods.” The prisoner being convicted and sentenced to transportation for fourteen years, the record was removed by writ of error, and error assigned that it did not sufficiently appear from the indictment that she was servant to the owner of the goods at the time when the larceny was committed, although she might have been so at some moment of the same day.

The Chief Justice's dislike of technical niceties.

Lord Tenterden, C. J.: “If we were to hold that the allegation ‘that on such a day the prisoner being the servant of Joseph Hellier did on the same day steal his goods,’ does not import that she stole the goods at the same time when she was his servant, we should expose ourselves to the reproof expressed by a very learned and very humane judge, that it is disgraceful to the law when criminals are allowed to escape by nice and captious objections of form.” *

Although generally so sound in his decisions, he did not reach the reputation of infallibility. He shocked the conveyancers exceedingly by holding that a jury might presume the surrender of a term assigned to attend the inheritance where it had not been dealt with for a number of years in subsequent conveyances,† and he got into some discredit by broadly laying down that a mortgagor allowed

Doubtful decisions by him.

* *Rex v. Somerton*, 7 B. and C. 465.

† *Doe v. Hilder*, 2 B. and A. 784.

to remain in possession of the mortgaged premises is tenant to the mortgagee.* I must be permitted likewise to doubt the soundness of his decision that a native of Scotland born out of wedlock, but rendered legitimate according to the law of that country by the subsequent marriage of his parents, is not inheritable to freehold property in England. It was confirmed by the House of Lords, but I cannot help thinking that it proceeded on a narrow-minded and erroneous principle. The admission was freely made that the claimant, having the status of legitimacy in the country of his birth, was to be considered legitimate in England for every other purpose, and the *conundrum* arising from the definition of a "bastard" in the Statute of *Merton* might easily have been got over by the supposition of law upon which such legitimization proceeds—that a prior marriage had been contracted though not declared till after the birth of the child. The notion that there is some peculiarity in the tenure of common soccage land whereby it must descend to a son *de facto* born in wedlock, as borough English land goes to the youngest son, is in my opinion a fiction to support a miserable technicality.†

The bias which chiefly carried Abbott's mind astray when it missed the object to which it was directed was a suspicion of fraud. He had a very indifferent opinion of human nature, and at times he seemed to believe all mankind to be rascals. He delighted in discovering what he considered a fraudulent contrivance on the part of the plaintiff or of the defendant, and in unravelling it. I have heard Scarlett jocularly boast that he got many a verdict by humouring this propensity—"just giving

His propensity to suspect fraud.

* Partridge v. Beer, 5 B. and A. 604.
† Doe d. Barthwistle v. Vardill, 5 B. and C. 438. This decision lowered us terribly not only in the opinion of Scotch

but of French and American lawyers. Professor Storey was very strong against it.

the hint very remotely to the Chief Justice, and allowing his Lordship all the pleasure and éclat of exposing and reprobating the cheat." This dexterous advocate certainly did at last prevail upon him to lay down a rule which, while it was acted upon, materially obstructed the transfer of negotiable securities—that "where a bill of exchange has been lost or stolen, a subsequent holder, although he has given a valuable consideration for it, cannot maintain an action upon it if the jury should think that he took it *under circumstances which ought to have excited the suspicion of a prudent and careful man.*" The rule having before been that the title of the holder for value could only be impeached by proof of fraud,* the new doctrine was questioned and thus defended :

Abbott, C. J. : "I cannot help thinking that if Lord Kenyon had anticipated the consequences which followed from the rule laid down by him in *Lawson v. Weston*, he would have paused before he pronounced that decision. Since then the practice of robbing stage-coaches and other conveyances of securities of this kind has been very considerable. I cannot forbear thinking that this practice has received encouragement by the rule laid down in *Lawson v. Weston*, which gives a facility to the disposal of stolen property of this description. I should be sorry if I were to say anything, sitting in the seat of judgment, that either might have the effect or reasonably be supposed to have the effect of impeding the commerce of the country by preventing the due and easy circulation of paper. But it appears to me to be for the interest of commerce that no person should take a security of this kind from another without using reasonable caution. I wish that doubts had been thrown on the case of *Lawson v. Weston* at an earlier time, and then this plaintiff would have conducted himself more prudently, and would not have suffered."

His doctrine about "care and caution" in taking negotiable securities overruled.

The new fashion took amazingly. This rule of "circumstances to excite the suspicion of a prudent and careful man" was adopted by all the Judges, and was

* *Lawson v. Weston*, 4 Esp. 56.

applied to all cases where the owner of any negotiable instrument had once been induced by improper means to part with the possession of it, as well as to cases of accidental loss and of robbery. But the rule died with its author. It was soon much carped at: some Judges said that *fraud and gross negligence* were terms known to the law, but of "the circumstances which ought to excite suspicion," there was no definition in Coke or in Cowell,—and the complaints of bill brokers resounded from the Royal Exchange to Westminster Hall, that they could no longer carry on their trade with comfort or safety. The consequence was that in the course of a few years by decisions in all the Courts at Westminster, the doctrine of "suspicion" was completely exploded, and the old rule restored that the claim of the holder of a negotiable security who gave value for it before it was due, although he may have received it from a person who could not have sued upon it, can only be defeated by proof of *mala fides* on his part.*

Notwithstanding these imperfections, failings, and errors, which it has been my disagreeable duty to allude to, I have pleasure in quoting and corroborating the testimony in the Chief Justice's praise of his contemporary and friend Sir Egerton Brydges, which shows the general estimation he enjoyed among his countrymen:—"With what admirable skill, honour, and steadiness he fulfilled the most laborious, most difficult and overwhelming duties of his high station is universally acknowledged."

Q. Whether
it would
have been
for his
reputation
that he
had died a
commoner?

I am reluctant to bring to a conclusion my observations upon Abbott as a great magistrate, for in this capacity he excites almost unmixed admiration and respect. But in the last years of his life his destiny made him a political character, and although he still

* Goodman v. Harvey, 4 Ad. and Ell. 470.

acted honourably and conscientiously, he by no means added to his permanent fame. I cannot help wishing, indeed, that like Holt he had died a commoner. The coronet placed on his brow might raise his consequence with the vulgar, but in the eyes of those whose opinion was worth regarding he was a much greater man when seated on his tribunal, with conscious mastery of all that belonged to his high office, he distributed justice to his admiring fellow-subjects, than when he sought to sway a legislative assembly with which he was wholly unacquainted, and to which he was wholly unsuited.

CHAPTER LIV.

CONCLUSION OF THE LIFE OF LORD TENTERDEN.

THE supposed elevation of the Chief Justice at this time, which exposed him to some censure, was no fault of his. He used confidentially to express surprise that his friend and patron Lord Chancellor Eldon, whose advice would have been implicitly followed by the Prime Minister and the King, had not raised him to the peerage when he became Chief Justice, but had actually resigned the Great Seal without making him such an offer. He concluded that at any rate Sir Charles Abbott ought to have had the refusal of the honour in 1824, when Sir Robert Giffard was created a Baron, having filled only the inferior offices of Chief Justice of the Common Pleas and Master of the Rolls. But he made no application or remonstrance by reason of what might have been considered a slight, and I believe that he would have been perfectly contented to remain Sir Charles Abbott, Knight, for the rest of his days. Lord Eldon's conduct is very inexplicable in withholding a peerage from one who from his high office had a fair claim to it, of whom he could have felt no jealousy, who had been many years his devil and dependent, and with whom his word in the House of Lords would have been law. Can we suppose that he was actuated by a disinterested study of Abbott's real good ? *

* Since writing the statement in the text respecting Abbott's peerage, I have been favoured with a perusal of his DIARY from which I make the following extract, showing that he had become more desirous of having his blood ennobled than could have been suspected from his usual moderation and good sense, and from the sentiments which he himself had expressed in his letter to

However, he was most unexpectedly made a peer on the *disgrace* of that patron in all whose notions respecting State and Church he fully coincided, by a Prime Minister whom he had never seen, and whose principles, although they were not altogether Whiggish, he considered dangerously latitudinarian.

Mr. Canning, the warm friend of religious toleration, having agreed to form a balanced Cabinet with an anti-Catholic Lord Chancellor, Sir John Copley, still in dreadful apprehension of the Pope, although on the verge of a sudden conversion to Catholic emancipation, had agreed to take the Great Seal, and was to be raised to the peerage by the title of Baron Lyndhurst. Moreover Plunket, upon a slight show of opposition from the bar, having renounced the office of Master of the Rolls in England, and accepted the office of Chief Justice of the Common Pleas in Ireland, was likewise to be made

Sir Egerton Brydges [*ante*, p. 290]:—

"April 7th, 1824.—Lord Giffard took his seat in the House of Lords on the first day of the Session, and within a day or two afterwards a patent issued, appointing him to act as Speaker of the House of Lords in the absence of the Lord Chancellor. A few days afterwards, the Lord Chancellor, with some hesitation and appearance of difficulty in introducing the subject, asked me what my feelings had been on Lord G.'s promotion to the peerage? I told him I had felt very little as it regarded myself, but much as it regarded my office, being higher than Lord G.'s. He asked whether I should think it right to move in the matter myself or to leave it to him? I told him I certainly should not think it right to move it in myself. All that I could collect farther was that some of the Ministers had thought it not necessary to propose a peerage to me on the present occasion, because it was conferred on Lord G. for the special purpose of enabling him to sit in the House of Lords to hear appeals. I remarked that though I could not

give my eldest son a fortune by any means suitable to the dignity, yet, under present circumstances, I should hardly think myself at liberty to refuse the honour, and should leave my son to make such advantage as he could of it, being sure he would never disgrace it by his conduct."

In a letter to the second Lord Kenyon, Lord Eldon professes to explain his sincere views respecting Abbott's peerage: "I agree with you that, generally speaking, the Chief Justice of the King's Bench should be a peer, even if there had been no usage on the subject. Now, as to Abbott, his practice has been behind the bar. He never had any office—I think not a silk gown. He enters therefore on the office in very moderate circumstances, with a considerable family. His health is tender, and his eyesight not in a very safe state. Upon the whole, his own difficulty about taking the office was the apprehension that peerage was to go with it. This determination appears to me to have been quite right."—*Lives of Chancellors*, vol. vii. p. 333, 3rd. ed.

a British Peer by the family name, which his eloquence had rendered illustrious. It was thereupon suggested to the new premier by Scarlett, long his intimate private friend, and now his Attorney-General elect, that it would be a graceful act in public estimation, and would throw some obloquy on Lord Eldon, whom they both heartily hated and who heartily hated them both, if a peerage were given to Lord Eldon's neglected *protégé*, the Chief Justice of England. Accordingly Mr. Canning, in a letter to him, dated 19th April, 1827, after an introduction of polite eulogy, said—"As in the approaching law promotions more than one peerage will be conferred by his Majesty, it has occurred to Mr. Canning as due to Lord Chief Justice Abbott, to his Lordship's eminent services and to the dignity of the Court over which he presides, that an opportunity should be offered to the Lord Chief Justice to express his willingness (if he entertains it) to accept a similar honour, which his Majesty is ready graciously to bestow upon him." The answer expressed humble and grateful acquiescence,—upon which immediately came a notice from the Home Office that the inchoate peer should notify his choice of a title, and that a sum of money, about 800*l.*, should be deposited for the fees of the patent. He was afraid of jests if he should become "Lord Abbott," and he thought of the title of HENDON, where he had a villa; but he was advised to have something more sounding, and TENTERDEN being familiar to him as a Kentish man, from the well-known connection between the first appearance of its steeple and of the Goodwin Sands, the Gazette announced "that his Majesty had ordered letters patent to pass the Great Seal, to create Sir Charles Abbott, Knight, a Baron of the United Kingdom, by the name, style, and title of Lord Tenterden, of Hendon, in the county of Middlesex."

April 30.

On the 2nd of May following there was a grand ovation in Westminster Hall, to do honour to the solemnity of his taking his seat in the House of Lords. Sir James Scarlett, the Attorney-General, mustered an immense congregation of barristers, and we followed the new peer, as yet only in his judicial robes, from the Court of King's Bench to the room of the Earl Marshal. There he was habited in his peer's robes, and marching between Lord Bexley and Lord Kenyon, he entered the House, and presented his patent and writ to the Lord Chancellor. We all stood under the bar, and the space being too small for us, such a serried conglomeration of wigs never was seen before or since. We could hear nothing of the patent, the writ, or the oaths which were read, but we witnessed the procession through the House, headed by the Earl Marshal, and our Chief being seated by Garter King at Arms on the Barons' bench, we joyfully took our departure. Next morning in Court the new peer threw down the following note, which was handed through all the rows till it reached the junior of our body :—

Ceremony
of his
taking his
seat in the
House of
Lords.

"DEAR MR. ATTORNEY,

"I was indeed gratified yesterday by the flattering mark of attention which I received from the Bar. Assure them that it went to my heart.

"Ever most faithfully yours,

"TENTERDEN."

He continued to attend the House for some time very diligently, much pleased with his new honours, and afterwards as often as he entered it he wore his judicial *costume*, being the last Chief Justice who ever did so, when not officiating as Speaker. There was *franking* in those days, and he was pleased to say to me that "he considered this privilege to be conferred upon him for the benefit of the profession." He really was tickled

when asked for a frank, and a glow of satisfaction might be descried on his countenance as he was writing, "Free—TENTERDEN." But he soon looked as if he considered it rather a liberty to ask him for a frank—particularly after he discovered that when on the circuit, sitting in Court, surrounded by country Justices, a graceless youth had made him frank a letter to a young lady of notoriously light character in London.

Lord Tenterden's maiden speech was his most successful (I might say his only successful) effort as a parliamentary orator. Luckily the subject was quite in his own line as a lawyer. A young heiress of fifteen had been decoyed away from a boarding school by a profligate adventurer, whose object was her fortune, and had been induced to marry him. As he thought his scheme completely successful the moment the marriage ceremony had been performed, her friends had an opportunity to rescue her before any further injury had been inflicted upon her. They prosecuted him for the abduction, and he was convicted and sentenced to a long imprisonment. They then presented a petition to the House of Lords, with her concurrence, praying that the marriage might be dissolved. He presented a counter-petition, praying that the House would make an order for his being brought up to defend his marital rights. The Earl of Lauderdale, who had been called to the Scotch bar, possessed at that time great weight as a "Law Lord," and he contended that although there had been instances of dissolving by Act of Parliament the marriage of a young lady brought about by force, the present marriage having been solemnised with the consent of both parties could not be dissolved without a violation of principle nor without establishing a very dangerous precedent.

Lord Tenterden recapitulated all the facts of the case

as if he had been summing up to a jury. He said "the principal offender and his accomplices had been convicted of a conspiracy originating in the basest motives of lucre, and conducted by fraud and forgery. He thought the House bound to afford the relief prayed. The friends of the unfortunate girl had done all in their power to vindicate the law, and now came to the Legislature for that relief which the peculiar nature of the case demanded. Although there had been here no actual force, the law says that fraud supplies the place of force. Possibly the marriage might be declared null and void by sentence of the Ecclesiastical Court, but if proceedings were to be instituted for that purpose, their Lordships must recollect the great delay which must take place and the anxiety and distress to which the parties must be subjected in the mean time. The pretended husband had the audacity to complain of hardship, but his punishment had been light compared with the enormity of his offence. Their Lordships were bound to inform him and all others who possessed themselves of the persons of young women for the sake of base lucre, that they not only exposed themselves to the penalties which the Courts of law might inflict, but that there is a power in the country which will deprive them of all possibility of ever reaping any advantage from their crimes."*

Leave was given to bring in the Bill, and it afterwards quietly passed through both Houses and received the Royal assent.

Before Lord Tenterden again opened his mouth in the House of Lords, Mr. Canning had fallen a victim to the aristocratic combination against him; Lord Goderich, the most imbecile of prime ministers, after a few weeks of premiership had ingloriously resigned; the Duke of Wel-

He opposes
the repeal
of the Cor-
poration
and Test
Acts.

* 17 Parl. Deb. 882.

lington and Peel were at the head of affairs; and a Bill had come up from the House of Commons to repeal the Corporation and Test Acts. These our Chief Justice had been taught to believe, and did potently believe, to be the two main pillars of the Church, and he was absolutely horrified to find that they were in danger from a joint assault of Whigs and liberal Tories. The Earl of Eldon remained true to his colours; but, sad to relate, Lord Lyndhurst and the Duke of Wellington himself meditated desertion.

The enemies of the Bill did not venture to attempt to throw it out on the second reading, and confined themselves to attempts to damage it in Committee. Lord Tenterden finding that there was no chance of retaining the "Test Act," which applied to all offices and places of profit or power under the Crown, and if strictly enforced prevented any member of the established church of Scotland from holding a commission in the army or being an exciseman in any part of the United Kingdom, made a desperate struggle in favour of the "Corporation Act," whereby Dissenters were excluded from the offices of mayor, alderman, common councillor, and all other offices in all municipal corporations in England. Not meeting with any sympathy with his attachment to the Corporation Act in its integrity, he moved an amendment whereby at least the office of chief magistrate in towns should not be polluted by being held by a Dissenter. He urged that the Church was and ought to be supported as part of the constitution; consequently everything which upheld its dignity should be attended to; and he therefore proposed that in the declaration to be made by the mayor or chief magistrate of any municipal corporation these words should be inserted:—"I entertain no opinion on the subject of religion which may or can prevent me attending the morning and evening

service of the Church of England, as set forth in the book of Common Prayer." The Bishop of Chester asked whether, as the law would still stand, a corporate magistrate would not be prevented from attending a dissenting place of worship in the insignia of his office? Lord Tenterden answered "that might be so, but still he thought that his amendment would be useful." Upon a division there were only 22 contents against 111 non contents.* He succeeded, however, by a suggestion which he offered, in excluding Jews from municipal corporations, till in the year 1844 they were admitted by an Act brought in by Lord Lyndhurst and passed during the administration of Sir Robert Peel. The first form of declaration proposed by Lord Tenterden was—"I recognise the books of the Old and New Testament according to the authorized version as truly expressing the revealed will of God;" but to this the Duke of Wellington objected, as it would exclude Roman Catholic officers from the army. Thereupon Lord Tenterden prompted a bishop to move the introduction of the form used in the oath of abjuration—"on the true faith of a Christian," and this being considered unobjectionable, was agreed to without a division.

The Bill, even with the substituted declaration, the Chief Justice still condemned as fatal to the Church. It is wonderful that a man of his religious feelings should have had no objection to the desecration of the most solemn rite of Christianity by requiring it to be administered for a political purpose†—and that a man of his shrewdness did not anticipate the certain de-

* 18 Parl. Deb., 1609.

† I well remember the time when barristers, who had not been at church for many years, on being appointed King's Counsel, used to go to St. Martin's Church (appropriated for this purpose),

pay their guinea, and bring away a certificate of their having taken the Sacrament of the Lord's Supper according to the rites and ceremonies of the Church of England.

clension of the Dissenters as soon as they should be deprived of this invaluable grievance.*

If he disapproved of the conduct of the Government in 1828, for supporting the Bill introduced by Lord John Russell in favour of Protestant Dissenters, what must have been his sensations when, in 1829, he heard, on authority which could no longer be distrusted, that the Duke of Wellington and Sir Robert Peel were about to introduce a Bill to remove all disabilities from Roman Catholics, and to allow them to sit in both Houses of Parliament! On the second reading of the Bill, Lord Tenterden made a speech, the beginning of which was attentively listened to, and is said, from the solemn tone and manner of the speaker, to have been very impressive:—

“My Lords,” said he, “I would not now have offered myself to your Lordships in my individual capacity; but, thinking that it may be expected that a person in my situation should not give a silent vote against this portentous measure, I am induced to stand up and express my sentiments upon it. Several noble Lords who have supported it have denominated themselves ‘the friends of civil and religious liberty.’ If by assuming that title they mean to insinuate that those who differ from them as to the fitness of the proposed innovation are not the friends of civil and religious liberty, I for one must enter my protest against such an imputation. Every man may be mistaken in his opinion—he may even be mistaken in the motives on which he is acting—but, for myself, I have no hesitation in asserting that the very reason for my opposition to the present measure is derived from an attachment to civil and religious liberty. I have all my life admired the Protestant Church of England. I should have been the most ungrateful of men if I had not done so. My esteem for that church, which grew with my growth and strengthened with my strength, has not declined since the bodily feebleness of age has been stealing upon me, but is increased by the perils to which she is now exposed. Not only am I actuated by religious considerations, but by the fixed conviction that our Protestant

* The Church has ever since been and has now only to fear internal dividing ascendancy over the Dissenters, visions.

Church is more favourable to civil and religious liberty than any other established church which either does at present exist, or has ever before existed in the world. Can I support a measure which I am sure by a broad and direct road leads to the overthrow of this Protestant Church? We have been told of countries in Europe in which Roman Catholics and Protestants have been found to go on very amicably together. But is there any other country in Europe or elsewhere which bears any resemblance to Ireland? In Ireland there is an acknowledged Popish hierarchy, assuming to themselves the names and titles of those dioceses which by law belong to Protestant prelates. And is it to be supposed that any hierarchy—let alone a Popish hierarchy—would be content to leave others in the enjoyment of those honours and emoluments which were wrested from their ancestors of the same faith with themselves? Is it possible that there should not exist in the human mind an earnest and anxious desire to obtain the restitution of these privileges? And will not strength be given to persons of the Roman Catholic persuasion to effect their object by granting them political power? By political power I mean a power exercised according to legitimate means; I cannot consent to give that designation to mere physical force or the power of numbers, which, if properly resisted, I do not dread."

He then went into a long, tiresome enumeration of all the Acts passed against Roman Catholics since the Reformation down to the Union with Ireland, and set the peers on both sides of the House a yawning, although they were too well bred to cough, or in any way intentionally to interrupt him. He concluded by declaring his conviction that, although the measure might for a time produce tranquillity, such tranquillity would not be of long duration—and would only be the deceitful stillness which precedes the storm, and that hereafter the combination of physical force and political power would be fatal to the empire.

Earl Grey spoke next, and thus began in a strain something between compliment and sneer:—

"I too, my Lords, am very reluctant to offer myself to your notice. I rise with a considerable degree of fear lest presumption should be imputed to me for attempting to follow the noble

and learned Lord, the Chief Justice of England, who has just delivered his opinion, and who has rested the greater part of the argument which he addressed to your Lordships on a review of the laws which bear upon the situation of his Majesty's Roman Catholic subjects, and whose great learning, professional habits, and high authority give him claims to your Lordships' attention to which I cannot pretend."

He commented upon all the statutes which had been quoted, contending that none of them presented a permanent bar to the claims of the Roman Catholics. When he came to the Bill of Rights, and alluded to the declaration, that to keep and carry arms was the right of the subjects of this realm, Lord Tenterden interjected, "being Protestants." *Earl Grey*: "Well, my Lords, of the Protestant subjects—it makes no difference in my argument: among all the provisions of the Bill of Rights the noble and learned Lord does not find it anywhere stated that Roman Catholics are to be for ever excluded from the enjoyment of the rights of the British constitution."

The Chief Justice fared no better when, on Lord Grey's statement that Parliament had enacted in the reign of William and Mary that every officer of the army and navy shall take the oath of supremacy before receiving his commission, he exclaimed, "It was a separate Act." *Earl Grey*: "Yes, it was a separate Act (1 W. and M. c. 8, s. 10); but it was as much a part of the measures of the Revolution as the law which required that the members of both Houses of Parliament should take the oath of supremacy. Although an administration to which I belonged was overturned by an attempt slightly to modify that Act, it was afterwards totally repealed by the very men who raised against us the cry that the Church was in danger,—the Earl of Eldon from the woolsack giving the royal assent,—and both services were thrown open to Roman Catholics,—as both Houses of Parliament, I hope, will shortly be,—

notwithstanding his opposition and that of the noble and learned Lord,—who perhaps was not fully aware of his apparent inconsistency.” *

I heard Lord Tenterden, without any diminution of my respect for him, oppose the Catholic Relief

Bill, which, though a necessary, was a perilous measure,—the ominous prophecies about which

He opposes
the Anatomy
Bill.

certainly have received some verification by subsequent Papal aggression. But I felt much disgust from his violent and vulgar opposition to a bill which I had materially assisted in carrying through the House of Commons, to put an end to the system of robbing churchyards of dead bodies, and to the crime of committing murder for the supply of subjects for dissection to schools of anatomy. He utterly misrepresented the Bill, by saying that all who went into hospitals hereafter must lay their account with their bodies being “dissected and anatomised, as if they were hanged for wilful murder.” To excite prejudice and passion against that which must evidently be conducive to decency and humanity, he added in a piteous tone, that “the poor justly felt an unconquerable aversion to the dissection of their bodies, which would not be overcome by the most solemn assurances that they would afterwards receive Christian burial.” The practice of “Burking,” which had brought such disgrace upon Edinburgh, he declared might in future be prevented by a newly-discovered test, which enabled any skilful medical man to ascertain whether a person whose body was offered for sale, had died by disease or by violence, and so, the market for murdered dead bodies being spoilt, murders to obtain them for sale would cease. These arguments, coming from a Chief Justice, made a considerable impression on the Episcopal bench and Conservative peers, and the bill was lost. However, proof being given that

* 21 Parl. Deb., 300.

in spite of the continuing atrocities of resurrection-men, anatomy could not be taught under the existing system, the Bill was allowed to pass in the next session of Parliament, and it has been found to operate most beneficially.*

Lord Tenterden likewise strenuously opposed the Bill for taking away the capital punishment from the crime of forgery, which had long been considered, even by enlightened men, indispensably necessary for our commercial credit. He said, "When it was recollected how many thousand pounds, and even tens of thousands, might be abstracted from a man by a deep laid scheme of forgery, he thought that this crime ought to be visited with the utmost extent of punishment which the law then wisely allowed."†

Nevertheless he was by no means, like Eldon and Kenyon, a bigoted enemy to law reform. When commissions were issued by Peel, on the suggestion of Lord Brougham, for this laudable object, he allowed his own name to be introduced into that for inquiring into the procedure of the ecclesiastical courts; he assisted in pointing out proper commissioners for the others; ‡ he encouraged their labours, and when they had made their reports, he employed himself in drawing Bills to carry their suggestions into effect.

Thus he wrote in the summer of 1830 to his old friend Sir Egerton:—

"You are probably aware that we had three commissions, one on the practice and proceedings of the superior Courts of Common Law, another on the Law of Real Property, and a third on the Ecclesiastical Courts. Two reports have been made by each of the two first—none by the latter, of which I am a member. The reports contain recommendations and pro-

* 21 Parl. Deb., 1749.

† *Ib.* 854.

‡ By his advice I was myself placed

at the head of the Real Property Commission.

posals for many alterations, some of which I think useful and practicable. Something, however, must be done by the Legislature to satisfy the public mind; and under this impression I have employed myself since the circuit in preparing no fewer than five bills, intended chiefly to give some further powers to the common law courts, and make some alteration in the practice, but without infringing on any important principle, adopting some of the recommendations, with some alterations from the proposals. I wish it were possible to cure the evil you so justly complain of. Whatever shortens and simplifies will be calculated to save expense; but Acts of Parliament cannot make men honest. I doubt whether an Act to subject bills for conveyancing to taxation would effect much. As I think they ought to be, I would willingly promote such an Act; but if I bring my five bills before Parliament, I shall have done at least as much as I ought to do, and perhaps more, though, to say the truth, I have one more bill on the anvil, and have had, for at least three years, without the courage to propose it. It has had much of the *limæ labor*. Indeed, to say the truth, this *limæ labor* is an occupation by no means disagreeable to my mind."

The Bills respecting the procedure of the Common Law Courts, embodying the suggestions of the Commissioners, passed without opposition, and almost without notice, but that on which the *limæ labor* had been so long bestowed, and which was peculiarly his own, caused a good deal of discussion. The object of it was to define the periods of time which will confer a title to certain rights by enjoyment, without a reference either to prescription or grant, and to rectify the injustice which arose from claims to tithe being brought forward, notwithstanding exemption from payment of tithe, or the existence of a *modus* for centuries, during which the advowson of the living and the land in the parish had been sold upon the footing of the exemption or the *modus*. In introducing his Bill in the House of Lords he thus tried to make it intelligible to his unwilling hearers:—

His measure
respecting
prescription
and tithes.

"Your Lordships may be aware that many rights can only be

established on the supposition that they have existed 'for time whereof the memory of man runneth not to the contrary'; and that this period denominated 'legal memory,' or 'prescription,' extends so far back as the commencement of the reign of Richard I., or as some say, only to his return from the holy war. But it is hardly ever possible to trace a right so far back by direct evidence, and judges are obliged to tell juries that from modern enjoyment they may presume the existence of the right in very remote times. This, however, leads to great uncertainty, for Judges may differ as to what is a reasonable ground for the presumption; and if evidence is offered, showing that during any reign since Richard I. the right did not, or could not exist, it is gone for ever. Again, some rights may be claimed by grant from the owner of the land over which they are to be exercised, and after an enjoyment of them for a certain period of time, Judges have been in the habit of calling upon juries to presume that such a grant has been made, although it is not forthcoming, and in truth never had existence. But besides the scruples of some Judges and some jurors against resorting to this fiction, it is occasionally insufficient from legal technicalities to protect long enjoyment. I conceive that it will be much better to follow the example of all other civilized nations, and to enact that after undisturbed enjoyment for periods to which direct and satisfactory evidence may be applied, the right shall be conclusively established, and I propose periods of sixty, forty, thirty, and twenty years, under different modifications and conditions according to the nature of the right—whether it be to take part of the profits of land, or only to exercise an easement over it. Thus the right to common of pasture, to common of estovers, to ways, to light, air, and water, will be respectively regulated and provided for. The next subject to which I have to draw your Lordships' attention is the claim to tithes. At present, under the maxim *nullum tempus occurrit ecclesie*, a modus, or small payment in lieu of tithes, may be challenged and set aside, unless it is supposed to have existed so far back as legal memory. Here again the doctrine of presumption is resorted to, but it will surely be much better that some reasonable time should be fixed, during which positive proof of the modus shall be required, and that then the modus shall be unchallengeable. Farther, non-payment of tithes for any length of time operates no exemption, unless the land can be proved to have belonged to a religious house before the Reformation, and thence much expensive and vexatious litigation ensues. I propose to make the payment of a modus or entire non-payment for thirty years sufficient to establish the modus or exemption, unless a contrary practice can be distinctly proved at some antecedent time, and where the evidence extends

to sixty years to make the right claimed by the occupier of the land to pay a modus, or to be altogether exempt from payment, absolute and indefeasible. I am, my Lords, most sincerely attached to the clergy of the Church of England; I should be most ungrateful if I were not so: but it is better for them as well as for their parishioners that a permanent peace should be concluded between the parties on the basis of *uti possidetis*. I doubt not that the clergy have much oftener lost what strictly belonged to them than gained by usurpation. Having seen the bad effects of the warfare which has been carried on, I must say *PETO PACEM*. Tithe suits almost invariably cause personal dissensions in the parish, and lessen the usefulness of the incumbent, but they not unfrequently involve him in expense which he can ill afford, and turn out disastrously for himself and his family."

Lord Chancellor Brougham highly complimented the Bill, and it was read a first time, but on account of the speedy dissolution of Parliament it was lost for that Session. In the following year Lord Tenterden again brought forward the measure, dividing it into two Bills, one "For shortening the time of prescription in certain cases," and the other "For shortening the time required in claims of modus decimandi, or exemption or discharge of tithe." They both passed * exactly as he framed them,—but I am sorry to say that although they proceed on very good principles, they have by no means established for him the reputation of a skilful legislator. The Judges have found it infinitely difficult to put a reasonable construction upon them, and, in adapting them to the cases which have arisen, have been obliged to make law rather than to declare it.†

An opportunity occurring to him of expressing his general opinion upon "Parliamentary privilege," he

* 2 and 3 Wm. IV. c. 71, and 2 and 3 Wm. IV. c. 100. One of his biographers has likewise given to him the credit of 3 and 4 Wm. IV. c. 27, for abolishing real actions and making a uniform rule as to the title to lands from enjoyment. Townsend, vol. II., 272. Having drawn it myself, with the assistance of my brother Commissioners, I can testify

that he never saw it till it was in print.

† On one question which arose respecting exemption from tithes, a case was sent by the Lord Chancellor successively to the Court of Common Pleas, the Court of Queen's Bench, and the Court of Exchequer, and in each Court the Judges were equally divided upon it.

showed very plainly what his opinion would have been respecting the questions on the subject which arose after his death. Lord Brougham, the Chancellor, being rather hostile to Parliamentary privilege, had expressed a doubt respecting the power of the House to fine and imprison for a libel. *Lord Tenterden*: "All the Courts of Westminster Hall exercise this privilege, and how can it properly be denied to your Lordships? In what cases, under what circumstances, and to what extent your Lordships should exercise this privilege, it is for your Lordships to determine—but the privilege is clear, distinct, and indisputable—being conferred not for the protection of those who possess it, but for the sake of the public and for the good government of the nation. The very principle of our constitution requires that the two Houses of Parliament should possess all the powers necessary for enabling them to perform the functions which it assigns to them."*

I now come to the measure which he considered fatal to the monarchy, which drove him from the House of Lords, and which probably shortened his days—the reform of the representation of the people in Parliament. On the 5th night of the debate on the second reading of the Reform Bill of 1831, he rose and spoke as follows:—

"I feel it necessary to address a very few sentiments to your Lordships on this important question. Many topics had occurred to me against this appalling Bill, but they have already been urged by others with more force and ability than I could have brought to the task. But there is one point on which I feel it my peculiar and sacred duty to address you—not so much in my character as a peer, as in the character which the

* 3 Parl. Deb., 3rd Series, p. 1714. Lord Brougham imputed to him a blunder, by supposing that he had attributed to the House of Commons, as well as to the House of Lords, the power

of fining and imprisoning for a time certain. He merely excused himself on the ground that he had never been a member of the Lower House.

His sound
views re-
specting
parliamen-
tary privi-
lege.

He opposes
the Reform
Bill.
Oct. 7.

robes I wear remind me that I have to sustain. I find, my Lords, that the rights of almost all the corporate bodies in England, whether they are held by charter or prescription, are treated by this Bill, so far as I see, with absolute contempt. Many of them are to be annihilated, and the rest are to be despoiled of their privileges. I have listened in vain for any reason for the extent to which this destruction and spoliation are carried. I should be ready to run the risk of innovation were it intended only to transfer privileges from some decayed parts of the constitution to other more sound and healthy parts, which I believe in my conscience is all that is desired by the reasonable portion of his Majesty's subjects, by the middle classes, for whom I entertain as great a respect as any man (I may tell your Lordships that I feel a respect and affection for these classes, having sprung from them), but instead of such a reasonable and moderate measure, reconcilable with the institutions of the country, I find one going farther than the worst fears of alarmists had ever anticipated. On what footing is the measure rested? Expediency alone. My Lords, Expediency is a tyrant whose will is made a pretext for every act of injustice. Corporate rights, hitherto held sacred, are now recklessly violated, and I will tell those who despise them that after this precedent the rights of property will be equally disregarded, and liberty and life itself will be sacrificed to expediency, or the appetite of the mob for plunder and blood. I conclude with repeating that I consider myself in the situation which I unworthily fill peculiarly bound to uphold the chartered rights of the people, and I hereby solemnly proclaim that the flagrant violation of these rights is of itself an insuperable objection to this Bill."

I happened to be standing on the steps of the throne when this oracular denunciation was delivered, and I am sorry to say that the effect was rather ludicrous. The notion had never before entered the imagination of any man that the Chief Justice of England is ex-officio the Patron Saint of all municipal corporations, and that when they are in danger he is bound to appear *Deus ex machinâ* in their defence.

The doomed Tenterden was soon after snatched away (happily, perhaps) from the evil to come. How would he have comported himself when the "Municipal Corporation Reform Bill" was brought forward, which

actually did sweep away every close corporation in the kingdom, made every ratepayer a burgess, and created by popular election a Mayor, Alderman, and Councillors, in every borough—"all statutes, charters, and customs to the contrary in anywise notwithstanding?"—On the present occasion he was in a triumphant majority of 199 to 158 against the second reading of the Parliamentary Reform Bill—and for some months longer he slept sound, corporate rights remaining untouched.*

But in the month of April following, the Parliamentary Reform Bill again came up from the Commons; and although it now very improperly preserved the franchise of the corrupt free-men, Lord C. J. Tenterden's hostility to it was in no degree mitigated. Accordingly it was thus assailed by him in the last speech he ever delivered in parliament:—

A.D. 1832.
His last
speech in the
House of
Lords, with
his vow
never again
to enter the
House if the
Reform Bill
passed.

"A safe and moderate plan of reform I should not object to; but the question is, whether you will go further with the consideration of this bill—a bill which I have no hesitation in saying ought on no account to be permitted to pass into a law. The bill evinces a settled disregard of all existing rights. In its disfranchising clauses it does more than can be attempted with safety, and in its enfranchising clauses it goes infinitely beyond the wants and the wishes of the country. The right of sending representatives to parliament is to be lavished not merely on great populous towns which have recently risen into opulence, but on villages and hamlets which have sprung up around them. Moreover, the elective franchise is to be placed, if not entirely, at least in a preponderating degree, in the hands of one class. If this had been a class of well educated, well informed men, still I should have objected to making it the sole depository of political power; but this class notoriously does not consist of such persons as I have just described. Those who belong to it are entitled to your Lordships' superintending care and protection; but they are unfit to become your masters. We are asked to go into a committee on the bill, because there it may be amended. In committee I should feel it my duty to move that the whole be omitted after the word 'that,' for it

* 8 Parl. Deb., 3rd Series, 301.

cannot be modified so as to be rendered innocuous. The principle of the bill is precisely the same with that which you have already rejected. It is said that we must not go against the wishes of the people and a decided majority of the House of Commons. But you must consider whether the fulfilment of such wishes would not be pernicious to the people; and a majority of the House of Commons, however much entitled to respect, ought not to induce your Lordships to sanction a measure which you believe in your conscience would involve Lords and Commons in the general ruin. Let the Bill be immediately rejected, for any protracted consideration of it can only lead to the delusion as well as to the disappointment of the public. We are threatened with calamitous consequences which may follow the rejection of the bill; but I have no faith in such predictions. I never have despaired, nor will now despair of the good sense of the people of England. Give them but time for reflection, and I am sure they will act both wisely and justly. Of late they have been excited by the harangues of ministers, by the arts of emissaries, and by the inflammatory productions of the periodical press. Let them have time to cool, and they will ere long distinguish between their real and pretended friends. Already there is a growing feeling among the people that they have been following blind guides, and I believe there is a great majority of the nation ready to adopt any measure of temperate reform. This measure, my Lords, leaves nothing untouched in the existing state of the elective franchise. It goes to vest all the functions of government in the other House of Parliament, and if it were to pass there would be nothing left for this House or for the Crown, but to obey the mandates of the Commons. NEVER, NEVER, MY LORDS, SHALL I ENTER THE DOORS OF THIS HOUSE AFTER IT HAS BECOME THE PHANTOM OF ITS DEPARTED GREATNESS."

There was still a decided majority of the Peers determined that the Bill should not pass. Nevertheless the expedient course was considered to be, that it should not again be thrown out in this stage, and the second reading was carried by a majority of 184 to 175.*

For a few days there seemed reason to think that Lord Lyndhurst's manœuvre would succeed. The King concurred in it, and a new administration was named to mutilate the bill. But the nation said No! The King

* 12 Parl. Deb., 3rd Series, 398, 464.

was obliged to agree, if necessary, to create the requisite Peers to carry "the Bill, the whole Bill, and nothing but the Bill." The dread of being so "swamped" by fresh creations frightened away a great many of its opponents, and it quietly passed its subsequent stages unchanged.

Lord Tenterden was as good as his word. After the Reform Bill received the Royal assent he never more entered the doors of the House.

If he had survived a few years, he might have laughed at the disappointment of those who expected from this measure a new era of pure public virtue and uninterrupted national prosperity; yet he would have witnessed the falsification of his own predictions; for, while individual peers ceased to be members of a formidable oligarchy, the House collectively retained its place in the constitution, and, I believe, it has since risen in public estimation and in influence.

Lord Tenterden was sincerely convinced that the House and the country were doomed to destruction, and this conviction aggravated the disorders by which his enfeebled frame was now afflicted. In the following strain, although almost too feeble to support existence, he poured forth his anguish to Sir Egerton Brydges:—

His health declines.

"Russell Square, May 20th, 1832.

"MY DEAR SIR EGERTON,

"I have made several attempts to write to you, but have found myself unable to do so; nor can I write as I ought, or wish to do. My spirit is so depressed, that when I am not strongly excited by some present object that admits of no delay, I sink into something very nearly approaching to torpidity. My affection for you remains unchanged. God bless you.

"Your most affectionate friend,

"TENTERDEN."

Again, on the 8th of June, after addressing the same

correspondent upon matters of inferior importance, he adds—"We differ upon the great measure that has so long agitated the country. I considered the Catholic Bill as the first, and I consider this as the concluding step to overturn all the institutions of the country. In my anticipations of the effect of the first, I have certainly not been mistaken. The present state of Ireland proves this. Would to God I may be mistaken as to the effect of the Reform Bill. Great alarm was felt yesterday from the Paris news. I hear to day that the Government prevailed in the conflict. I have no confidence in a temporary triumph over a principle that I believe was never subdued, and can only be restrained by unintermitting coercion."

He rallied a little, and got through the sittings after Term pretty comfortably, giving his annual dinner to the King's counsel; but instead of asking each of them to drink wine with him *serialim* as formerly, he drank wine conjointly, first with all those who sat on his right hand, and then with all those on his left, hospitably admonishing them to drink wine with each other.

In July he went the Midland Circuit, as the lightest he could choose, and he was able to sit in ^{His last} Court and finish the business at every assize ^{circuit.} town, notwithstanding the annoyance of a violent cough and other alarming symptoms. After a short stay at Leamington he returned to his seat at Hendon, and there spent the long vacation; sometimes yielding to despondence, and sometimes trying to amuse himself with making Latin verses, and with classical reading, which used to be his solace.

Being obliged to come to town for a Council to determine the fate of the prisoners convicted at the Old Bailey, he wrote to Sir Egerton ^{The long vacation before his death.} Brydges the following melancholy epistle, which did not reach its destination till the writer was

relieved from all his sufferings, and transferred to a better state of existence.

"MY DEAR SIR EGERTON,

"I came to town yesterday to attend His Majesty on the Recorder's report, and have received your letter this morning. I have lately suffered, and am still suffering, very severely from an internal complaint, which they call an irritation of the mucous membrane. It troubled me during all the circuit. I got rid of it for a short time at Leamington, but it soon returned with greater violence, and has for some time deprived me of appetite, and produced great depression of spirits. Sir Henry Hallford, however, assures me that a medicine he has ordered me will in time remove the complaint, and my confidence in him induces me to trust it may be so, though after a trial of six days I cannot say that I find any sensible improvement. God bless you.

"Your most affectionate friend,

"TENTERDEN."

However, his mental faculties remained wholly unimpaired; and he was determined "to die, like a camel in the wilderness, with his burden on his back." An important Government prosecution, in which I was counsel—The King v. Mayor of Bristol—was appointed to be tried at bar immediately before Michaelmas Term. This excited prodigious interest, as it arose out of the Reform Bill riots at Bristol, in which a considerable part of the city was laid in ashes. The Chief Justice appeared on the Bench with the other Judges, and continued to preside during the first two days of the trial. I recollect one characteristic sally from him, indicating his mortal dislike of long examinations. Mr. Shepherd, the junior counsel for the Crown, having asked how many horses were drawing a messenger's post-chaise sent in quest of the mayor, and being answered "four," Lord Tenterden sarcastically exclaimed in a hollow voice, "and now, Sir, I suppose you will next get out from your witness *what was the colour of the post-boys' jackets.*" But his bodily health was evidently sinking. When he went

His last
appearance
in court.

home in the evening of the second day of the trial he had no appetite for the dinner prepared for him, and he fancied that fresh oysters would do him good. He ate some; but they disagreed with him, and an access of fever supervening, he was put to bed, from which he never rose. Although attended by Sir Henry Halford, Dr. Holland, and Sir Benjamin Brodie, his disease baffled all their skill. He became delirious and talked very incoherently. Afterwards he seemed to recover his composure, and, raising his head from his pillow, he was heard to say in a slow and solemn tone, as when he used to conclude his summing up in cases of great importance, "And now, gentlemen of the jury, you will consider of your verdict." These were his last words: when he had uttered them his head sunk down, and in a few moments he expired without a groan.

According to directions left in his will, his remains were, in a very private manner, interred in the vaults of the Foundling Hospital, of which he had been a governor. At the south-east entrance to the hospital is to be seen his monument, with the following modest inscription, written by himself only two months before his death:—

"Propè situs est
CAROLUS BARO TENTERDEN
Joannis et Aliciæ Abbott
Fillius natus minor
Humillimæ sortis parentibus,
Patre vero prudenti Matre piâ ortus
Scholæ Regiæ Cantuariensis
Posteâ Collegii Corporis Christi Oxon. Alumnus
Per annos xx in causis versatus
Primò ad Communia Placita
Mox ad Placita coram ipso Rege Tenenda
Justiciarius
Deinde Justiciarius Capitalis
Gratiâ Demum Georgii IV. Regis
In Baronum ordinem cooptatus
Quantum apud Britannos honestus labor
Favente Deo valeat
Agnoscas lector!"

His epitaph.

Underneath is added, by his pious son—

“Hæc de se conscripfit
Vir summus idemque omnium modestissimus.”

The impartial biographer cannot say that he was a great man—but he was certainly a great magistrate. To the duties of his judicial office he devoted all his energies, and on the successful performance of them he rested all his fame. Authorship he never attempted

His character and manners.

in his lifetime beyond his law book, which, although it passed through various editions, is already out of fashion and thrown aside, like an old almanack, as it was founded on statutes many of which have been repealed, and on decisions many of which have been reversed. A Diary which he kept, from November 1822, to February 1825, now lies before me. The following commencement led me to expect much useful information and amusement from it:—

“I have often wished that my predecessors had left a Diary, and that I was in possession of it.”

But I am grievously disappointed. It contains very little that is interesting to a succeeding Chief Justice or to any one else. The diarist not only abstains from all notice of public events, but he makes no remark of any value on any professional subject. He never hints at any defects or improvements in the administration of justice in his Court, and never introduces the name of any counsel who practised before him. He confines himself to dry details of the number of causes tried at the sittings, and his expenses on the circuits. One might have expected some satirical allusions to his brother Judges, for whom he had not a very high respect; but nothing is said of any of them that might not have been published at Charing Cross.

There is no ground for regret that the Diary was not begun sooner or continued later.*

Neither on the Bench nor in society did he ever aim at jocularly or wit, although, by accident or design, he once uttered a pun. A learned gentleman, who had lectured on the law and was too much addicted to oratory, came to argue a special demurrer before him. "My client's opponent," said the figurative advocate, "worked like a mole under ground, *clam et secretè*." His figures and law Latin only elicited an indignant grunt from the Chief Justice. "It is asserted in Aristotle's Rhetoric"—"I don't want to hear what is asserted in Aristotle's Rhetoric," interposed Lord Tenterden. The advocate shifted his ground and took up, as he thought a safe position. "It is laid down in the Pandects of Justinian"—"Where are you got now?" "It is a principle of the civil law."—"Oh, Sir!" exclaimed the Judge, with a tone and voice which abundantly justified his assertion, "we have nothing to do with the civil law in this Court."†

The extreme irregularity of the Judges in their conferences, which there has often been occasion to deplore, once forced him into the necessity of coining a word. He said he could not call them *Parliamentum Indoctum*,

* Beyond the extracts which I have given, I find nothing more curious than the following table of his expenses on the Circuit:—

	£	s.	d.
Spring, 1816—Home	243	7	0
Summer, 1816—Oxford	290	9	0
Spring, 1817—Western	323	16	0
Summer, 1817—Norfolk	251	7	0
Spring, 1819—Norfolk	165	15	0
Summer, 1819—Midland	274	9	0
Summer, 1822—Northern	203	3	0
Summer, 1824—Western	374	0	0

† Townsend, 261. I should rather think, notwithstanding the *Joe Miller* of Garrick catching an orange thrown at him on the stage, and exclaiming, "This is not a civil orange!" that the Chief Justice's pun was unintentional,

like that of Mr. Justice Blackstone, who says in his Commentaries, with much gravity, that "landmarks on the sea-shore are often of *signal* service to navigation."

but that he might well call them *Parliamentum Bablitivum*.

He was courteous in company, but rather stiff and formal in his manners, as if afraid of familiarity and requiring the protection of dignified station—which probably arose from the recollection of his origin and of his boyish days. He would voluntarily refer to these among very intimate friends, but he became exceedingly uneasy when he apprehended any allusion to them in public. Once, however, he was complimented upon his rise under circumstances so extravagantly ludicrous that he joined in the general shout of laughter which the orator called forth. A Lord Mayor of London, long since deceased, gave a dinner at the Mansion House to the Judges, and, in proposing their health, observed, in impassioned accents, "What a country is this we live in! In other parts of the world there is no chance, except for men of high birth and aristocratic connections; but here genius and industry are sure to be rewarded. See before you the examples of myself, the Chief Magistrate of the Metropolis of this great empire, and the Chief Justice of England sitting at my right hand—both now in the highest offices in the State, and both sprung from the very dregs of the people."

Lord Tenterden is placed in a very amiable point of view by MACREADY, the celebrated tragedian, in a lecture which he delivered to a Mechanics' Institute after he had retired from the stage, and which he published with several others, possessing great interest. The lecturer gives an account of a visit paid by him to Canterbury Cathedral under the auspices of a Verger, who, by reading and observation, had acquired wonderful knowledge of architecture and mediæval antiquities. Having introduced us to his guide, the ex-tragedian thus proceeds:

Compliment to him by the Lord Mayor of London.

His recollections of Canterbury.

—"He directed my attention to everything worthy of notice; pointed out with the detective eye of taste the more recondite excellence of art throughout the building, and with convincing accuracy shed light on the historical traditions associated with it. It was opposite the western front that he stood with me before what seemed the site of a small shed or stall, then unoccupied, and said, 'Upon this spot a little barber's shop used to stand. The last time Lord Tenterden came down here he brought his son Charles with him, and it was my duty, of course, to attend them over the cathedral. When we came to this side of it he led his son up to this very spot and said to him, '*Charles, you see this little shop; I have brought you here on purpose to show it to you. In that shop your grandfather used to shave for a penny! That is the proudest reflection of my life! While you live never forget that, my dear Charles.*' And this man, the son of a poor barber, was the Lord Chief Justice of England. For the very reason, therefore, that the chances of such great success are rare, we should surely spare no pains in improving the condition of all whom accident may depress or fortune may not befriend."

I have heard some complain, although I confess I myself never saw sufficient ground for the complaint, that after Abbott had been several years Chief Justice, he was not only a *martinet* in Court, but that he rigidly enforced the rules of evidence and of procedure when presiding at his own table. The following amusing anecdote, recorded of him in the 'Quarterly Review,' I suspect is only entitled to the praise of being *ben trovato* :—"He had contracted so strict and inveterate a habit of keeping himself and everybody else to the precise matter in hand, that once, during a circuit dinner, having asked a county magistrate if he would take venison, and receiving what he deemed an evasive reply: 'Thank you, my Lord, I am going to take

boiled chicken ;' his Lordship sharply retorted, ' That, Sir, is no answer to my question ; I ask you again if you will take venison, and I will trouble you to say *yes* or *no* without further prevarication !' "

At all times he showed an affectionate regard for the place of his early education :—" In 1817, the centenary commemoration of the school, he accepted an invitation to Canterbury, witnessed the examination of the scholars, addressed the successful candidates, and, after attending the usual service and sermon at the cathedral, dined with the masters and members of the institution at the principal hotel of the city. In his speech after dinner he expressed himself with feeling and effect, and declared that to the free school of Canterbury he owed, under the Divine blessing, the first and best means of his elevation in life. Nor was his gratitude confined to words. With a tasteful retrospect of the causes of his own success, he founded and endowed two annual prizes—the one for the best English essay, the other for the best Latin verse." *

Lest I should be misled by partiality or prejudice, I add, in justice to the memory of Lord Tenterden, sketches of him by very skilful artists. Thus is he portrayed by Lord Brougham :

" A man of great legal abilities, and of a reputation, though high, by no means beyond his merits. On the contrary, it may be doubted if he ever enjoyed all the fame that his capacity and his learning entitled him to. For he had no shining talents ; he never was a leader at the bar ; his genius for law was by no means of the depth and originality which distinguished Mr. Holroyd ; nor had he the inexhaustible ingenuity of Mr. Littledale, nor perhaps the singular neatness and elegance of Mr. Richardson. His style of arguing was clear and cogent, but far from brilliant ; his opinions were learned and satisfactory, without being strikingly profound ; his advice, however, was always safe, although sometimes, from his habitual and extreme caution, it might be deficient in boldness

Character of
Lord Tenterden
by Lord
Brougham.

* 2 Towns, 237.

or vigour. As a leader he very rarely and only by some extraordinary accident appeared, and this in a manner so little satisfactory to himself, that he peremptorily declined it whenever refusal was possible, for he seemed to have no notion of a leader's duty beyond exposing the pleadings and the law of the case to the jury, who could not comprehend them with all his explanation. Although his reputation at the bar was firmly established for a long course of years, it was not till he became a Judge, hardly till he became Chief Justice, that his merits were fully known. It then appeared that he had a singularly judicial understanding, and even the defects which had kept him in the less ambitious walks of the profession—his caution, his aversion to all that was experimental, his want of fancy—contributed, with his greater qualities, to give him a very prominent rank indeed among our ablest Judges. One defect alone he had, which was likely to impede his progress towards this eminent station; but of that he was so conscious as to protect himself against it by constant and effectual precautions. His temper was naturally bad; it was hasty and it was violent, forming a marked contrast with the rest of his mind. But it was singular with what success he fought against this, and how he mastered the rebellious part of his nature. Indeed it was a study to observe this battle, or rather victory, for the conflict was too successful to be apparent on many occasions. On the bench it rarely broke out, but there was observed a truly praiseworthy feature, singularly becoming, in the demeanour of a Judge. Whatever struggles with the advocate there might be carried on during the heat of a cause, and how great soever might be the asperity shown on either part, all passed away—all was, even to the vestige of the trace of it, discharged from his mind, when the peculiar duty of the Judge came to be performed; and he directed the jury, in every particular, as if no irritation had ever passed over his mind in the course of the cause. Although nothing can be more manifest than the injustice of making the client suffer for the fault or the misfortune of his advocate—his fault if he misconducted himself towards the Judge; his misfortune, if he unwittingly gave offence—yet, whoever has practised at *nisi prius*, knows well how rare it is to find a Judge of an unquiet temper, especially one of an irascible disposition, who can go through the trial without suffering his course to be affected by the personal conflicts which may have taken place in the progress of the cause. It was, therefore, an edifying sight to observe Lord Tenterden, whose temper had been visibly affected during the trial (for on the bench he had not always the entire command of it, which we have described him as possessing while at the bar), addressing himself to the points in the cause, with the same

perfect calmness and indifference with which a mathematician pursues the investigation of an abstract truth, as if there were neither the parties nor the advocates in existence, and only bent upon the discovery and the elucidation of truth."

The following discriminating praise and mild censure are meted out to him by Mr. Justice Talfourd, the author of 'Ion':

"The chief judicial virtue of his mind was that of *impartiality*; not mere independence of external influences, but the general absence of tendency in the mind itself to take a part, or receive a bias. How beneficial this peculiarity must prove in the judicial investigation of the ordinary differences of mankind, is obvious; yet in him it was little else than a remarkable absence of imagination, passion, and sympathy. In him the disposition to single out some one object from others for preference—the power and the love of accumulating associations around it and of taking an abstract interest in its progress, were wholly wanting. The spirit of partisanship, almost inseparable from human nature itself, unconsciously mingling in all our thoughts, and imparting interest to things else indifferent, is especially cherished by the habits and excitements of an advocate's profession, and can, therefore, seldom be wholly prevented from insinuating itself into the feelings of the most upright and honourable Judges. But Lord Tenterden, although long at the bar, had rarely exercised those functions of an advocate which quicken the pulse and agitate the feelings; he had been contented with the fame of the neatest, the most accurate, and the most logical of pleaders; and no more thought of trials in which he was engaged as awakening busy hopes and fears, than of the conveyances he set forth in his pleas as suggesting pictures of the country to which they related. The very exceptions to his general impartiality of mind partook of its passionless and unaspiring character. In political questions, although charged with a leaning to the side of power, he had no master prejudices; no sense of grandeur or gradation; as little true sympathy with a high oppressor as with his victims. On the great trials of strength between the Government and the people, he was rarely aroused from his ordinary calmness; and he never, like his predecessor, sought to erect an independent tyranny by which he might trample on freedom of his own proper wrong. He was 'not born so high' in station or in thought, as to become the comrade of haughty corruption. If seduced at all by power, it was in its humbler forms—the immunities of the

—by Mr.
Justice
Talfourd.

unpaid magistracy and the chartered rights of small corporations, which found in him a congenial protector. If he had a preferable regard in the world, beyond the circle of his own family and friends, it was for these petty aristocracies, which did not repel or chill him. If he was overawed by rank, he was still more repelled by penury, the idea of which made him shiver even amidst the warmth of the Court of King's Bench, in which alone he seemed to live. His moral like his intellectual sphere was contracted; it did not extend far beyond the decalogue; it did not conclude *to the country*, but was verified *by the record*. His knowledge, not indeed of the most atrocious but of the meanest parts of human nature, made him credulous of fraud; a suggestion of its existence always impelled his sagacity to search it out; and if conspiracy was the charge, and an attorney among the defendants, there were small chances of acquittal. The chief peculiarity and excellence of his decisions consist in the frequent introduction of the word '*reasonable*' into their terms. He so applied this word as in many instances to relax the severity of legal rules, to mediate happily between opposing maxims, and to give a liberal facility to the application of the law by Judges and juries to the varying circumstances of cases, which before had been brought into a single class. If he would not break through a rule for the greatest occasion, he was acute in discovering ways by which the right might be done without seeming to infringe it; and his efforts to make technical distinctions subservient to substantial justice were often ingenious and happy."

I reserve, as a pleasing *finale* for this memoir, Lord Tenterden's ardent and unabated devotion to classical literature, which confers high distinction upon him, and is so creditable to our profession,—showing that the indulgence of such elegant tastes is consistent with a steady and long-continued and successful application to abstruse juridical studies, and with the exemplary performance of the most laborious duties of an advocate and of a judge. Lord Eldon never opened a Greek or Latin author after leaving college, and Lord Kenyon could never construe one. Lord Tenterden in his busiest time would refresh himself from the disgust of the *Liber Placitandi*, or the *Registrum Brevium*, by reading a Satire of Juvenal, or a chorus of Euripides. He likewise kept

His love of classical literature, and talent for making Latin verses.

up a familiar knowledge of Shakespeare, Milton, Dryden, and Pope, but he was little acquainted with the modern school of English poets. When Sir James Scarlett on one occasion referred to the poetry of Southey and Wordsworth as familiar to the jury, Lord Tenterden observed that "for himself he was bred in too severe a school of taste to admire such effusions."

Although he had long ceased to make verses himself, a few years before his death his passion for this amusement returned, and in the following letter to Sir Egerton Brydges, dated 15th September, 1830, he gave an interesting account of his "hobby."

"I have always felt that it might be said that a Chief Justice and a peer might employ his leisure hours better than in writing nonsense verses about flowers. But I must tell you how this fancy of recommencing to hammer Latin metres after a cessation of more than thirty years began. Brougham procured for me from Lord Grenville a copy of some poems printed by him under the title of 'Nugæ,' chiefly his own, one or two, I believe, of Lord Wellesley's, written long ago, and a piece of very good Greek humour by Lord Holland. The motto in the title-page is four or five hendecasyllabic lines by Fabricius. At the same time John Williams of the Northern Circuit, now the Queen's Solicitor-General, who is an admirable scholar, sent me four or five Greek epigrams of his own. I had a mind to thank each of them, and found I could do so with great ease to myself in ten hendecasyllables. This led me to compose two trifles in the same metre on two favourite flowers, and afterwards some others, now I think twelve verses in all, in different Horatian metres, and one, an Ovidian epistle, of which the subject is the Forget-me-Not. One of the earliest is an ode on the conservatory in the Alcaic metre, of which the last stanza contains the true cause and excuse of the whole, and this I will now transcribe :

'Sic fabulosas fas mihi cantibus
Lentre curas! Sit mihi floribus
Mulcere me fessum senemque,
Carpere quos juvenis solebam.'

"You see I am now on my hobby, and you must be patient while I take a short ride. Another of the earliest is an ode in the Sapphic metre on the *Convallaria Maialis*, The Lily of the

Valley. I am a great admirer of Linnæus, and my verses contain many allusions to his system, not, however, I trust quite so luscious as Darwin's Loves of the Plants, which, I believe, were soon forgotten. I have not seen the book for many years. I have one little ode written in the present year on a plant called the Linnæa Borealis, which, Sir J. Smith tells us, was a name given to it from its supposed resemblance to the obscurity of the early days of the great botanist. It is not common and possesses no particular attraction. Smith says it has sometimes been found on the Scottish mountains, and I have a plant sent to me last spring by Dr. Williams. I will send you a copy of this also. You must give me credit for the botanical correctness of the first part; of the rest you can judge, and you may criticise as much as you please. There are three other metres of Horace in which I should like to write something, but what, or when, I know not. It is now high time to quit this subject."

By the favour of the present Lord Tenterden, I have before me a copy of all the poems here referred to, and several more which the Chief Justice afterwards composed to cheer his declining days. From these I select a few for the gratification of my readers. It should be known that botany had been taken up by the Chief Justice late in life as a scientific pursuit, and that this gave the new direction to his metrical compositions.

Specimens
of his Latin
poems.

DOMUS CONSERVATORIA.

Haud nos, ut Urbem, Flora, per inclytam
Olim Quirites, Te colimus Deam,
Fictumve, coelatumve numen
Marmoreis domibus locamus;

Quas impudicis cantibus ebria
Lasciventium turba jocantium,
Festis salutatur donis,
Saltibus et strepitu revisat.

Sed rure ameno Te vitrea excipit
Ædes, remissis pervia solibus,
Quâ rideas imbres nivales
Et gelidis hyemem sub Arctis.

Secura jam non hospitio minus
Nostro foveris, sub Jove candidum
Quam si benigno Tu Tarentum, aut
Niliacam coleres Syenem.

Cæcis pererrat tramitibus domum
 Ardor, quietis læta laboribus
 Servire, jucundoque curas
 Auxilio tenues levare.

Ergo sub auris plurima non suis
 Ardentis Austri progenies igit,
 Neve Occidentalis Eois
 Addere se socias recusant

Herbæve, floresve, aut patrium dolent
 Liquisse cœlum, fervidus abestulit
 Si nauta, mercatorve prudens,
 Vel peregrina petens viator

Misit colendas; Gentibus exteris
 Spectandus hospes; salvus ab æstibus
 Uliginosis, nubibusque
 Lethiferâ gravilâs arenâ.

Non tale monstrum, naribus igneus
 Spirans vapores, cessit Jâsoni;
 Nec tale donum sævientis
 Confugis innocuam Creontis

Natam perussit: nec vagus Hercules
 Tam dira vicit, perdomuit licet
 Hydrasque, Centaurosque, clavo, et
 Semiferum validus Giganta.

Sit fabulosis fas mihi cantibus
 Lenire curas! Sit mihi floribus
 Mulcere me fessum, senemque
 Carpere quos juvenis solebam.

Prid. Cal. Jan. 1823.

GALANTHUS.

Anni primitiæ, Brumæ l'hœbique nivalis
 Pallida progenies,
 Frigoris atque gelu patiens quæ caulibus albam
 Findis humum teneris,
 Sen proprium de lacte Tibi, potiusve cadente
 De nive nomen habes,
 Te juvenesque senesque hilares agnoscimus ultro
 Auspiciumque tuum.
 Tu monstras abituram hiemem, redituraque vernæ
 Tempora lætitiæ;
 Tu Jovis aspectus mutari, et nigra serenis
 Cedere fata mones;
 Demittensque caput niveum, floresque pudicos
 Stipite de tereti,
 Nil altum moliri homines, sed sorte beatos
 Esse jubes humili;

Et tua blanditias juvenum nunc virgo suorum
Accipit, ipsa lubens,
Haud secus ac Zephyros si Sol Aurasque tepentes
Duceret Oceano.
Scilicet hyberno plantis quæ tempore florent
Vis genialis inest,
Atque illis miros intus Natura colores
Sufficit, alma parens,
Æthere sub gelido pecudum licet atque ferarum
Languat omne genus,
Et Cytherea tremens, pallâque informis agresti,
Algeat ipsa Venus,
Maternoque puer vix tendere debilis arcum
De gremio valeat.

Prid. Cal. Feb. 1829.

CONVALLARIA MAIALIS.

Quo pedes olim valere, robur,
Lætus et ruentis juvenalis ardor,
bi tuo, dulcis, redeunte curru,
Maia redirent;

Quærerem inculti nemorosa ruris,
Impiger densos penetrare valles,
Quâ suos gratâ renovent sub umbrâ
Lilia flores.

Ducat haud fallax odor insolentem,
Et loquax flatu nimis aura grato,
Abditam frustra sobolem recessu
Prodet avio.

Conditus molli foliorum amictu,
Dum tener ventos timet atque solem,
Fortior tandem gracili racemus
Stipite surgit,

Flosculis nutans oneratus albis;
Non ebur lucet, Pariumve marmor,
Purius, nec quæ decorat pruina
Cana cupressos,

Talis et pectus niveumque collum,
Advenâ viso, pudibunda texit
Insulæ virgo, leviterque cymbam á
Littore trusit;

Voce sed leni facieque mota,
Hospitem fido prius indicatum
Somnili vati, magicas ad sedes
Necia duxit;

Quæ diu, patris comes exulantis,
Vallium saltus coluit quietos,
Læta si nigras roseo ligaret
Flore capillos;

Mox tamen tristi monitu parentis
Territa, absentique timens, puella,
Nobilis supplex, petere ipsa Regem
Ausit et urbem.

Oti læssum accipitrem canemque
Seque captivum juvenem, querentis,
Et lacus dulces, Elenamque molli
Voce sonantis,

Palluit cantus;—adlit trementem
Lene subeident, generosus hospes,
Simplici plumâ, viridisque veste
Notus, ettore.

Et suâ, quem tu petis, hic in arce
Regius jam nunc, ait, est Jacobus;
Virgini nunquam gravis invocanti,
Mitte timores;

Te manent intus pater, atque patre
Charior; nudis Procerum capillis
Cæcus expectat, poterisque opertum
Noscere Regem;

Et vagi posthâc Equitis pericla
Forsan, et suaves Elenæ loquelas
Et levem vates memori phaselum
Carmine dicet.

Cal. Maii, 1828.

I have only further to state, that the Chief Justice left not a splendid, but a competent fortune to his family. He is now represented by his eldest son John, the second Lord Tenterden, a most amiable and excellent man. As the title was worthily won, I trust that it may long endure, and that it may be as much respected as if he who first bore it had "come in with the CONQUEROR."

Present representative
of the Chief
Justice.

INDEX.

*. The Roman Numerals refer to the Volumes—the Arabic figures to the Pages of each Volume.

ABBOT.

- ABBOT, Archbishop, trial and acquittal of, on a charge of manslaughter, i. 368—a Commissioner of the Treasury, 368.
- A'Becket, Thomas, fined and imprisoned, i. 22—fame of the miracles at his shrine, 25—immense riches arising therefrom, 35.
- Abingdon, Earl of, conviction and imprisonment of, for a libel on his attorney, iv. 114.
- Abinger, Lord, influence of, when counsel, over Lord Tenterden, iv. 359—ruling by, respecting the doctrine mooted in *Laugher v. Pointer*, 370.
- Abney, Mr. Justice, death of, from gaol fever, caught when attending the Old Bailey Sessions, iii. 75.
- Abridgments of the Common Law, interesting to the Antiquarian Lawyer—decisions of Gascoigne, i. 146—by Rolle, Chief Justice, Digest, ii. 49, 64.
- Accountants, public, attacks on, in the House of Commons, by Lord Kenyon, iv. 61, 66.
- Acre, Ranulphus de Glanville killed at siege of, i. 40.
- Acts of political importance to be presumed as proceeding from the advisers of the Crown, not from the Sovereign, iii. 358.
- Addison, Right Hon. Joseph, successful performances of his tragedy of 'Cato,' when brought upon the stage, iii. 3, n.—poetry preferred by, to politics, 193.
- Adolphus, Mr., ready retort of, to Sir James Scarlett, iv. 360.
- Advice, Letters of, to sons and grandchildren, by Sir Matthew Hale, ii. 239.
- Age of Reason, by Tom Paine, conviction and imprisonment of Williams for publishing, iv. 106.
- Alderley, near Wotton-under-Edge, birth and burial place of Sir Matthew Hale, ii. 158, 233.
- Allen Bill of 1816, incident during the debate on the, iv. 273.
- Allibone, Sir Richard, a professed papist, appointed Justice of the King's Bench,

APPRENTICE.

- ii. 352—reckless and foolish conduct of, on the trial of the Bishops, 306, n., 373, 374—illness and premature death of, 76.
- Almon, Rex v., trial and conviction of, for reprinting the letter of Junius to the King, iii. 359.
- Alnwick Castle, besieged by the King of Scotland in 1174, i. 23.
- Ambassadors, foreign, their rights judicially considered, ii. 57—statute declaring the immunities and privileges of, iv. 227.
- America, cause and progress of the disputes with, iii. 347, 378, 383 389,—disasters of our troops in, 388, 422.
- Amlens, Peace of, in 1802, iv. 207, 211, 234,—brief duration of, 237, 245, 246, 256.
- Anatomy Bill, speech against, by Lord Tenterden, iv. 389.
- Anderson, Sir Edward, Chief Justice of Common Pleas, refuses to become Chief Justice of England, i. 258.
- Anglo-Saxons, oppression of, by the Normans, i. 6—mutinous proceedings by, c. 9, 13—kind treatment of, by Henry I., 18.
- Annapolis, epitaph to Lord President Bradshaw at, ii. 133.
- Anne, Queen, character of the members constituting first House of Commons summoned by, ii. 427—important political events in the latter part of the reign of, iii. 1—dislike of, to the appointment of Sir Thomas Parker as Chief Justice, 15.
- Anstey's Pleader's Guide, a poem highly esteemed by Porson and others iv. 333, n.
- Appeal—of murder, proceedings in, i. 31; iii. 59—abolished by statute, iv. 232—Court of, for Criminal Cases, created by statute, i. 218, n.—to a Court of Error allowed under Common Law Procedure Act, when the Judges are divided, iv. 70, n.
- "Apprentice to the Law," the early designation of barristers until called serjeants, ii. 22, 278—costume of, in 17th century, 241.

Apprentices of London, unjustifiable prosecution of, on a charge of high treason, for pulling down some disorderly houses in the Moorfields, in 1668, ii. 152, 280.

Arbitration, ancient practice among Judges of settling differences privately by, i. 159—right of parties to settle disputes by, fully established by judgments of the Court of Queen's Bench and the House of Lords iv. 80, n., 216.

Arianism of the English Presbyterians in the first part of the 18th century, iii. 80, n.

Ariotta, the tanner's daughter of Falaise, descendants of, i. 4.

Armagh, titular Archbishop of, unfair trial of, before Pemberton, for alleged treason, ii. 287—indefensible and degrading execution of, 291.

Arne, Edward, death of, in prison, and prosecution of his gaolers for alleged murder, by neglect, iii. 43.

Arnold, the King's Brewer, the only dissentient juror on trial of the Bishops, ii. 375.

Articles, Thirty-nine, angry debate upon, in Convention Parliament, ii. 191.

Ascham, assassination of, at Madrid, ii. 109.

Ashby v. White, memorable trial of, establishing the right of electors to maintain actions for the malicious rejection of their votes by returning officers, ii. 423, 432, 438.

Ashford v. Thornton, trial by battle on an appeal of murder, awarded in, iv. 232—appellee discharged, 233; iii. 47.

Ashurst, Sir W. H., appointed a Justice of the King's Bench in 1770, iii. 296.

Aske, Richard, sole Judge of the Upper Bench in 1655, ii. 70, n.

Assizes of Jerusalem, its historical value, i. 33, n.—Bloody, prisoners transported at, by Judge Jeffreys, ii. 331, 362—recollection of, by the inhabitants of the western counties, 335.

Association, Protestant, of London, monster petition from, to the House of Commons, iii. 403—riotous proceedings fomented by, 404—8.

Aston, Sir R., Chief Justice of Common Pleas in Ireland, appointed a Justice of the King's Bench in 1765, iii. 266—a Commissioner of the Great Seal, in 1769 and 1770, iii. 145, 350, n.

Athol family, claim by, for additional compensation for rights in the Isle of Man taken from them, debated, iv. 235.

Atkins, Edward, Justice, refuses to act as Judge after the execution of Charles I., ii. 107.

Atkins, John, committal of, by Lord Holt for pretending to be a prophet, iii. 9.

Atkyns, Sir Robert, interference by, in the House of Commons on behalf of

Kelynge, Chief Justice, ii. 155—constitutional sentiments of, at Oxford assizes, as to the right of the people to petition the Crown for redress of grievances, 281—removed from the Bench by James II. for his honesty, 308—pamphlet by, against the King's dispensing power, 34—appointed Chief Baron in 1688, 380.

Attorneys, examination of, directed by statute, i. 154—to be sworn every term, 156—exclusive occupation by, of the Inns of Chancery, ii. 160—strictures upon by Sir M. Hale, 241—by Walpole, iii. 127—by Cobbett, iv. 42—ill usage of, by Lord Kenyon, 136—opinion of, entertained by Lord Tenterden, 407—modern disuse of the title of, 357, n.

Attorney-General, emoluments of the office of, i. 314.

Aubrey's Miscellanies, quotations from, i. 249, 270.

Auction, law respecting sales by mock, iii. 282.

Aula Regis, origin and duties of, i. 3, 6, 23, 218, n.—Puisne Judges of, 47, 64—trials before, 49—abolition of, 75, 84—appellate jurisdiction of, vested in the Parliament, 85.

Aylesbury election, case of Ashby v. White, respecting votes rejected at an, ii. 428, 433, 438—Marquis of, ancestors of, i. 82.

B.

Bacon, Justice, refuses to act as Judge after execution of Charles I., ii. 107.

Bacon, Lord, efforts by, to be made Solicitor-General, i. 273—anguish at the selection of Fleming, 274—obtains the office, 279—splendid eulogium by, on Lord Coke, 282—parliamentary reputation of, 296—patronized by Lord Essex, 305—ungrateful and infamous behaviour of, on the trial of Lord Essex, 292—King's Counsel, 307—letter of defiance to Coke, 308—speech to the King, respecting proclamations, 323—reasons by, for the appointment of Sir E. Coke to be Chief Justice of England, 325—made Attorney-General, 326—letter to the King, respecting the charge against the Earl of Somerset, 330—alarm of, that Lord Coke should be appointed Chancellor, 331—letter by, to the Judges, respecting commendams, 333—letter respecting Coke's Reports, 340—implacable enmity of, to Sir E. Coke, 346—indiscreet attempts of, to break off the marriage between Sir J. Villiers and Lady F. Coke, 351—impeachment and conviction of, for taking bribes, i. 82.

- 365—sentence on, 366, 429—character of, contrasted with that of Lord Coke, 405, 406—his bitter speech against Oliver St. John, ii. 84—maxim of, respecting over-eloquent Judges, 199.—See 'Lives of the Chancellors,' ii. 266.
- Bacon, Roger, chaplain to Henry III., anecdote of, i. 62.
- Badminton, case respecting villeinage within manor of, i. 220—mansion, suggestion of Sir M. Hale to the Duke of Beaufort, respecting its construction, ii. 264.
- Bags carried by barristers, ancient and modern rules respecting, iv. 161.
- Baldwin, Sir John, Chief Justice of Common Pleas, death of, i. 205.
- Balliol, John, contest of, for the crown of Scotland, decided in his favour by arbitration, i. 81.
- Balloons, trespass by travelling in, considered, iv. 231—voyages in, by Lunardi, in county of Fife, anecdote related by Lord Campbell respecting, 331, n.
- Balmorino, Lord, pleads guilty to the charge of high treason for aiding the Pretender in 1745, iii. 224—erroneous anecdote narrated by Horace Walpole respecting, 228, n.
- Bamridge, Thomas, Warden of the Fleet, his trial and acquittal for murder of a prisoner by alleged neglect, iii. 46, 69.
- Banbury, Knowllys claiming to be Earl of, charge of murder against, ii. 418.
- Banks, Sir John, Attorney-General, ii. 25—made Chief Justice of the Common Pleas, 93—death, 105.
- Bannockburn, famous battle of, i. 96.
- Bar, the English, power of admitting to, by the Inns of Court judicially recognised, i. 287; ii. 160—course of practice at, in the 17th century, i. 165—penury of learning and ability at, in 1676, ii. 246—pupils system of education for, iii. 139—contempt of literature attributed to, 129—solicitation of briefs for a beginner on circuit reprobated by, 82, n. jealousy of the, at the favouritism of Judges to individual members of, iv. 360.
- Barbers, ancient fraternity of, ready wit and entertaining information of, iv. 310.
- Barillon, ambassador of France to James II., original dispatches of, to his court, examined by Mr. Macaulay, ii. 336.
- Barnard, Sir John, alderman of London, interference of, on behalf of Elizabeth Canning, iii. 128.
- Barnet, battle of, gained by Edward IV., i. 179.
- Barnwood, near Gloucester, birthplace of Saunders, Chief Justice, ii. 316—bequest by him to the poor of, 331.
- Barrister, consulted in person in 17th century, ii. 242—wigs first worn by, at the Restoration, 123—early designation of, 278, n.—defects of the system of legal education of, iii. 185—regulation respecting bags of, iv. 162—continued youth of, 334—travel the circuit on horseback, 336—appointed King's Counsel formerly required to take the Sacrament, 385, n.
- Bartholomew, Roger, Burgess of Berwick-on-Tweed, complaint by, to Edward I. against certain English Judges, who exercised jurisdiction on the north side of the Tweed, i. 96.
- Basset, Philip, last Chief Justice, i. 68—taken prisoner at the battle of Lewes, 70.
- Basset, R., Chief Justice, a companion of William I., i. 19.
- Bathing, decision of Lord Tenterden against a common-law right of the public to the use of the sea-shore for, iv. 363.
- Bathurst, Lord Apsley, Justice of the King's Bench, decision of, in *Baxton v. Mingay*, respecting medical men, iii. 127, n.—made Lord Commissioner of Great Seal, 360—made Lord Chancellor, 373—incapacity of, for the office, 378, 382.—See 'Lives of the Chancellors,' v. 432.
- Battle, trial by, or grand assize, form of proceedings in, i. 31—awarded in an appeal of murder, in *Ashford v. Thornton*, iv. 232; abolished by statute, iii. 47; iv. 233, n.
- Baxter, Richard, appointed a King's Chaplain, ii. 195—intimacy of, with Sir M. Hale, 221—imprisonment for non-conformity, 224—his anecdotes of Sir M. Hale, 228, 241, 243—unfair trial of, before Jeffreys, 334.
- Bayeux tapestry, events of the Norman invasion noticed in, i. 5.
- Bayley, Rt. Hon. Sir John, Justice of King's Bench, iv. 282, 351—Baron of Exchequer, ii. 227, n.—Lord Raymond's Reports edited by, iii. 62, n.—ease and delight of, at nisi prius trials, 268, n.—appointment as Judge, iv. 296—character and legal qualifications of, 216, 356.
- Beauvoir, Dr. O., a learned man, Master of Canterbury Cathedral School at the accession of George III., iv. 312, 314.
- Bedford castle, invested and taken by Henry III., i. 67, n.
- Bedford, Earl of, prosecuted in the Star Chamber, ii. 86—made Lord Treasurer, 92.
- Bedingfield, Sir Henry, Chief Justice of Common Pleas, death of, ii. 362.
- Bedingham, Justice, resigns his place as Judge on the execution of Charles I., ii. 107.
- Bedloe, testimony of, disbelieved by juries,

- ii. 260, 262—complaint by, to the Council voted false, 266.
- Begum charge, speech of Lord Ellenborough, respecting the, on the trial of Warren Hastings, iv. 182.
- Belknappe, Robert, Chief Justice of Common Pleas, i. 128—signs, under coercion, the answer at Nottingham, 129—arrested and convicted of treason, 130—attainted, 131—transported to Ireland, 132—return to England and death, 133—attainder reversed, 134.
- Belknappe, Lady, action by, as a feme sole during the banishment of her husband, i. 134; iv. 95.
- Bellett, *ex parte*, application for a writ de venire inspiciendo granted in, iv. 79.
- Benefacta, R. de, Chief Justiciar, a Norman, i. 14—birth, conduct at Hastings, ample rewards of, 15.
- Benevolences, or compulsory loans, legality of, disputed by Oliver St. John, ii. 83.
- Berkeley, Lady Harriet, trial respecting the alleged seduction of, ii. 292.
- Berkeley, Mr. Justice, arrested on the judgment seat and committed a close prisoner to Newgate, ii. 30.
- Berkley, Sir John, Governor of Exeter, orders the immediate execution of a parliamentary officer, ii. 46.
- Bexwell v. Christie, decision in, respecting the rights of purchasers at auctions, iii. 283, n.
- Bigod, Hugh, a distinguished soldier and lawyer, i. 65—makes a circuit, 66—flight from the battle of Lewes, 66.
- Billing, Sir T., parentage, i. 170—joins the Yorkists, 172—Justice of King's Bench, 173—Chief Justice, 174—conduct at Burdett's trial, 175—again a Lancastrian, 178—again a Yorkist, 179—decisions of, in the Year Books, 180—death, 181.
- Bishops, their legal right to hunt in a park asserted, i. 368—bill for the eradication of, ii. 97—for the removal of, from House of Lords, 98—trial of the seven, 302, 366, 378—counsel employed for, 302, 311.
- Blackstone, Sir W., appointed a Justice of the King's Bench in 1770, iii. 286—Commentaries on the Laws of England by, quotations from, i. 158, 177; ii. 157, 220; iv. 403—patronized by Lord Mansfield, 246—argument of, in the famous case of *Perrin v. Blake*, 308, n.—his pure style of writing, i. 73; iv. 18, n.—legal argument of, against Lord Mansfield as to the application of the rule in *Shelley's case*, 15—unintentional pun of, 403.
- Blathwayt, Mr. Secretary, evidence of, on the trial of the Bishops, ii. 373.
- Blois, P. de, letter from, to Henry II. on the administration of justice in the *Aula Regia*, i. 23.
- Blundell v. Catterall, important decision in, denying the common law right of the public to the use of the seashore for bathing, iv. 363.
- Blunt, Sir C., trial of, for participation in Essex's rebellion, i. 261.
- Bodleian Library, ancient MSS. contained in, i. 92, n.
- Boleyn, Queen Anne, discussion respecting the trial of, and the sentence to be pronounced, i. 193.
- "Bolts" at the Inns of Court, i. 189.
- Bonrepaux, the French agent, despatches of, ii. 336.
- Book, piracy of obscene, how restrained by the English law, iv. 366.
- Booth, Mr., the celebrated conveyancer, intimacy and friendship of, with Lord Mansfield, iii. 271, 311—"Contingent Remainders," dedicated to, by Mr. Fearn, 311.
- Boswell's Life of Johnson, extracts from, relating to Lord Mansfield, iv. 26, 27.
- Botanical studies, taken up by Lord Tenterden late in life as a scientific pursuit, iv. 411.
- Brabazon, Roger de, Chief Justice, a lawyer regularly trained, i. 93—an admirable Judge, 94—address by, to the Scottish Parliament, 95—assists in the subjection of Scotland, 96—made Chief Justice of the King's Bench, 97—speech to English Parliament, death, descendants, 99.
- Bracton, Henry de, Chief Justiciar, a most enlightened and accomplished author, i. 73—his work '*De Legibus*,' &c., 74—its methodical and clear style, 75—his remarks on the royal prerogative, 321—remarks by, respecting ports and navigable rivers, iv. 364.
- Bradshaw, Lord President, origin and principles of, ii. 119—becomes a sergeant, 120—chosen president of the High Court of Justice, 121—his conduct during the King's trial, 123—on the trial of Duke Hamilton and Lord Capel, 125—opposes Cromwell, 128—death, 131—epitaph on, in America, 133.
- Brambre, Sir N., thrice Lord Mayor of London, i. 119—knighted for assisting to kill Wat Tyler, 123—ambush planted by, at Charing Cross, 120—impeached by the barons, 120—taken prisoner, 121—demands wager of battle, 123.
- Bramston, Francis, son of the Chief Justice, Baron of the Exchequer, ii. 34.
- Bramston, Sir John, parentage, ii. 21—made Chief Justice of England, 23—opinion respecting the legality of ship-money, 24—unbecoming conduct in the

- Star-Chamber, 28—proposal by, for placing the Bishop of Lincoln in the pillory, 29—impeachment by the Long Parliament, *ib.*—dismissed for refusing to attend the King at York, 32, 44—death, burial-place, descendants, 33.
- Braybrooke, Lord, well-edited edition of the *Bramston Autobiography* by, ii. 34.
- Breda, declaration from, terms of the, by the King, ii. 137, 187, 196, 221.
- Bridgman, Sir O., made Chief Baron at the Restoration, ii. 135—practised as a Chamber Counsel during the Commonwealth, refusing the oath of allegiance to Cromwell, 134—made Chief Justice of the Common Pleas, 186.
- Bristol, Bishop of (Newton), his letters to Lord Mansfield, iii. 386, 423—remarks by, on the celebrated speech of Lord Mansfield vindicating the employment of the military for the purpose of quelling the anti-papery riots, 418—character of Lord Mansfield by, iv. 36.
- Bristol, Rex v. Mayor of, memorable trial at bar respecting the Reform-bill riots, iv. 400.
- British subjects, rights of, in distant parts of the globe established by Lord Mansfield in *Fabrigas v. Mostyn*, iii. 287.
- Bromley, Sir Thomas, Solicitor-General, Chief Justice of King's Bench, i. 170, 211—made Lord Chancellor, 226, 251—part taken by, on the trial of Mary Queen of Scots, 243—*See* 'Lives of the Chancellors,' ii. 113.
- Brougham, Lord, 'Statezmen,' by, iii. 191, 346, n.—oratory of, iv. 14—remarks by, on the manners, knowledge, and classical wit of Lord Mansfield, 21, n.—speeches by, 265—biographical anecdotes related by, 292—character of Lord Tenterden by, 406.
- Brown, Dr., of Norwich, *an expert* in demonology, evidence by, ii. 217.
- Brown, Sir Anthony, Chief Justice of Common Pleas, degraded to be a puisne by Queen Elizabeth, i. 217.
- Browne, Justice, refuses to act as Judge after execution of Charles I., ii. 107.
- Brown's Chancery Reports, *tempore* Lord Kenyon, iv. 78.
- Brus or Bruce, R., first Chief Justice of the King's Bench, i. 75—pedigree, 76—education, a puisne Judge, 78—loses office, returns to Scotland, 80—claims the crown, *ib.*—decision against him by Edward I., death, descendants, 82.
- Dryden, Sir Egerton, anecdotes narrated by, of Lord Tenterden, iv. 312, 317, 330—letters to, from Lord Tenterden, 329—332, 343, 350, 354, 360, 390, 393, 400, 410.
- Buckingham, Duke of (Stafford), trial and execution of, for alleged treason, i. 190.
- Buckingham, Duke of (Villiers), job attempted by, prevented by Lord Coke, i. 337—attends the King to Scotland, 347—reconciled to the Puritans, 375—impeaches the Earl of Middlesex, 376—advice of, to the King respecting the Petition of Right, 387—denounced by Lord Coke, 388—causes the dismissal of Lord Coke, 415—assassination of, 445.
- Buller, Sir Francis, introduces the pupillage system for the Bar, iii. 188—appointed a Justice of the King's Bench in April, 1778, 266—his devotion to performance of judicial duties, 268—panegyric by, on Lord Mansfield, 263, 278—direction by, to the jury on the trial of the Dean of St. Asaph for a libel, 430; iv. 69—supposed reason that he was not made Chief Justice, iii. 440; iv. 81—becomes a Judge of the Common Pleas, iii. 441—advises Lord Tenterden to select the Bar instead of the Church as a profession, iv. 80—thorough acquaintance of, with every branch of his profession, and able discharge of duties as a Judge, iii. 440.
- Bunyan, John, long imprisonment of, under an illegal conviction, ii. 210—213.
- Burdett v. Arbott, decision of Lord Ellenborough in, respecting parliamentary privilege of commitment for contempt, ii. 311, 439, n.
- Burdett, Sir Thomas, his trial and barbarous execution for pretended treason, i. 175.
- Burgess, Dr., Bishop of Salisbury, tutor of Lord Tenterden at Oxford, iv. 319, 328.
- Burgoyne, General, capitulation of the English troops under, at Saratoga, iii. 383.
- Burke, Right Honourable E., complimentary remarks by, on the legal career of Lord Mansfield, iii. 319—speeches by, iv. 65—conduct of, on the impeachment of Warren Hastings, 171.
- Burleigh, Lord, selects Coke to be Solicitor-General on account of his extraordinary learning and ability, i. 273—prosecuted in the Ecclesiastical Court, for assisting in the irregular marriage of Lord Coke, 302.
- Burnet, Bishop, life of Sir M. Hale, by, ii. 157, 161, 163, 166, 170, 204—extracts from his History of his own Times, 256, 284, 350, 403—a witness for William Lord Russell, 293.
- Burning, the death appointed by law for women attainted of treason, i. 198.
- Burrough, Mr. Justice, reasons for his appointment as Judge in Court of Common Pleas, iv. 350.

- Burrow, Sir James, Master of the King's Bench, Eloge by, on Chief Justice Lee, iii 76—panegyric by, on Lord Mansfield, 369—ceremonious observances in the Court of King's Bench, described by, 341.
- Burton, Henry, of, quoted, ii. 63—notice of Lord Mansfield, in character of classical remains by, iv. 16.
- Bury, Sir Thomas, Baron of the Exchequer, decision by, in the Aylesbury election case, ii. 431.
- Bury St. Edmund's, trial of witches at, before Sir M. Hale, ii. 214.
- Bute, Earl of, his connection with Lord Mansfield, iii. 336—advice to, by Lord Mansfield, in framing the preliminaries of peace, 337—imprudent proceedings of, as prime minister, 339—rash conduct of, respecting the cider-tax—resigns office, 339.
- Butler, Charles, reminiscences of Lord Mansfield by, iii. 252.

C.

- CABAL ministry, profligate measures of the, ii. 283, 423.
- Cabinet, the, popular definition of, iv. 251.
- Cade, Robert, the poet, Metrical History of Chief Justice Staunton by, i. 104.
- Cæsar, Sir Julius, Master of the Rolls, a Commissioner of the Great Seal in 1621, i. 422.
- Caldecott, Thomas, King's Counsel, a great sessions lawyer, witty repartee of Lord Ellenborough to, iv. 298.
- Calamy, the famous Presbyterian divine, his amusing interview with Lord Holt, iii. 8.
- Calvin's Case, decision in, that all Scotchmen born since the Union in 1602 should enjoy the same privileges as native-born Englishmen, iii. 36, 284—Judgment of Lord Coke in, 285.
- Camden's Britannia, encomium on Lord Coke, contained in, i. 404.
- Camden, Lord, Chief Justice of Common Pleas, decision by, on the illegality of General Warrants, iii. 341—speech by, on the Middlesex election, 369—contest with Lord Mansfield respecting the decision of the Court of King's Bench in *Rex v. Woodfall*, 370—373—varied success as a debater in the Houses of Lords and Commons, iv. 14—puissant disavowal by, of his having concurred in the Ministerial proposal of 1761 for taxing America, 380.—See *Law of the Colonies, v. 275.*
- Campbell, Lord, cautions respecting our

- Colonial Law, explicitly laid down in, by Lord Mansfield, iii. 283.
- Campbell, Lord, cautions of, against the removal of the Courts of Law from Westminster Hall, i. 18—opinion by, as Attorney-General during the Canadian rebellion, that an armed band of American invaders should be treated as traitors, 233, n.—remarks by, on the Spanish marriages and dethronement of Louis Philippe, 354—attends the procession of Lord Tenterden, on taking his seat as a Peer in 1827, 416, n.; iv. 381—remarks by, on the abuse of leading questions on cross-examination of witnesses, ii. 304—opinion of, on the committal of Chief Justice Pemberton, 311—recollections of judges, counsel, and public events by, 318, n.; 385; iii. 78, 134, n.; 165, 189, 294, 321; iv. 76, 100—alteration introduced by, into Returns to Writs of Habeas Corpus for the discharge of persons committed for breach of parliamentary privilege, ii. 437—sources of interest to, as author of a Memoir of Lord Mansfield, iii. 169—opinion of, respecting the prevailing system of management at the Inns of Court, 290, n.—approval by, of the fête champêtre at Ken Wood, iv. 2—intimation to, by Lord John Russell that he would be appointed Chief Justice of England, 39—successful endeavours of, to provide for the settlement of disputes by arbitration, 80—Libel Act, passed by, in 1845, permitting the truth to be given in evidence, and referring to the Jury, whether publication was actuated by malice, or for good of the community, 89—belief of, as to Lord Kenyon's conscientious discharge of his judicial duties, 105, n.—first visit of, to Westminster Hall in June, 1800, described, 107—unsuccessful attempt by, to exempt from prosecution or action, a true account of speeches in parliament, published *bonâ fide*, for information of the public, 115—intimacy of, with George, second Lord Kenyon, 147—Chancellor of the Duchy of Lancaster and a cabinet minister, 148, n.—feelings of, in commencing a biography of Lord Ellenborough, 36.—recollections and remarks on the changes respecting bags used by the junior members of the bar, 161—recollections by, of the vengeful enthusiasm against Governor Wall, 207—observations by, on the trial of Despard for treason, 249—serious illness of, in 1816, and intimacy with Lord Tenterden, 352—statement by, of the obsequious deference paid to Lord Ellenborough, at Serjeants' Inn, 252—recollections by, of Dick Danby, 316, n.—

- of Lunardi's balloon in county of Fife, 321, n.—of Professor Porson, *ii*, 385; *iv*, 333, n.—of Mr. Topping, 334, n.—leader of the Oxford Circuit for three years without a silk gown, 338—remarks by, on the changes noticeable in Westminster Hall in 1860, 357—censures by, on the decision in *Doe d. Barthwistle v. Vardill*, 374—recollections of the practice on fresh appointments of King's counsel, 385, n.—on the ascendancy of the Church since the abolition of the Test and Corporation Acts, 386, n.—placed at the head of the Real Property Commission by Lord Tenterden, 390, n.—3 & 4 Wm. IV. c. 27, for abolishing real actions and making a uniform rule as to title to lands from enjoyment, drawn by, 393—11 & 12 Vict. c. 58, passed by, to render valid certain Quaker marriages, *ii*, 210—Bill for establishing a Court of Appeal on questions of Criminal Law, introduced by, in 1848, *i*, 218, n.—opinion expressed by, that it is unconstitutional for the Chief Justice of England to be a Cabinet Minister, *iii*, 328; *iv*, 248, 251.
- Canadian Rebellion, opinion of Lord Campbell, when Attorney-General, that an armed band of American invaders should be considered as traitors, *i*, 233, n.
- Canning, Elizabeth, the interesting trial of, for perjury before Chief Justice Willes, *iii*, 128.
- Canning, Right Hon. George, appointed Prime Minister, *iv*, 379—offer by, of the Peerage to Sir Charles Abbott, 380—death of, 383.
- Canterbury Cathedral School, founded by Henry VIII., *iv*, 312—cathedral, shrine of A'Becket in, *i*, 25—riches collected in, 33.
- Capel, Lord, defence of, on his trial before the High Court of Justice, *ii*, 126—execution of, as a traitor, *ib*.
- Capel, Sir Henry, speech by, in the Convention Parliament as to the exclusion of the Judges from the Indemnity Act, *ii*, 377.
- Cardigan, Earls of, their ancestry, *i*, 82.
- Cards, playing, a tax imposed on, in 1639, *ii*, 40.
- Carlefo, W. de, Chief Justiciar, *i*, 16—his pure and impartial administration, sufferings, and death, 17.
- Carlisle, Earl of, defence of the fashionable world in the House of Lords by, *iv*, 119.
- Carlisle, Bishop of (Law), memoir of, *iv*, 149—his parenthetical style of English composition, 296.
- Carolus, a piece of money circulated under the Stuarts, *ii*, 276.
- Carr, Sir John, foolish action at law against respectable booksellers for a burlesque critique on travels written by, defeated, *iv*, 230.
- Carteret, Lord, an accomplished yet flighty statesman without steady ambition—dialogue between, and Chief Justice Willes, *iii*, 122.
- Castell, Mrs., appeal of murder prosecuted by, against Bamridge and Corbett, wardens of the Fleet, *iii*, 46, 59.
- Castlemaine, Earl of, trial and acquittal of, for alleged participation in the Popish Plot, *ii*, 262.
- Castlereagh, Lord, anecdote of, respecting the office of Chief Justice of Chester, *iv*, 281.
- Catholic Emancipation, correspondence between the King and Lord Kenyon respecting, *iv*, 139—speech of Lord Tenterden against, 386—of Earl Grey for, 388.
- Catholics, Roman, Bill to mitigate the penal laws affecting, *ii*, 257; *iii*, 401, 402.
- Castlyne, Sir Robert, Chief Justice of King's Bench, *i*, 40, 90—a dull but cautious man, 151—remark by, on the imprisonment of Henry V., 151—ancestry, 228—grand entertainment given by, at Middle Temple, 229—Justice of Common Pleas, Chief Justice of England, on accession of Elizabeth, 231—conduct of, on state trials, 231—death and burial, 236—descendants, *ib*.
- Cato-street conspiracy, charge to the Grand Jury in reference to, by Lord Tenterden, *iv*, 370.
- Cato, tragedy of, its early representations—treated by the Whigs and Tories as a political composition, *iii*, 2, n.
- Causes tried before Chief Justiciars, *i*, 7.
- Cavaliers, unextinguishable hatred of, towards all implicated in the death of Charles I., *ii*, 137, 146—contrast between, and the Roundheads, by Lord Hale, 174, n.—hatred of, towards the Roundheads, 147; *ii*, 246, 276—the licentious mode of living of, during the wars, *ii*, 161, 252, 276.
- Cavendish, Sir John de, Chief Justice of King's Bench, *i*, 111—killed in Wat Tyler's rebellion, 112—his descendants ennobled, 113.
- Cavendish, Sir William, fidelity of, to Wolsey—large grants of abbey lands obtained by, *i*, 113.
- Cavendish, Lord John, Chancellor of the Exchequer—Receipt tax first devised by, *iii*, 424—motion by, to place the Paymaster of the Forces and other public accountants on fixed salaries, *iv*, 61.
- Ceffer, Mrs., trial and acquittal of, before Scroggs, for supposed complicity in the Popish Plot, *ii*, 263.

- Chamberlain letters, respecting the harsh treatment of Sir E. Coke, temp. Jas. I., i. 343, 348.
- Chambers v. Sir E. Brunfield, respecting the legality of ship money, judgment in, ii. 30.
- Chambers, Richard, a merchant of London, prosecution of, and heavy fine imposed upon, in the Star Chamber, ii. 14.
- Chambre, Sir Alan, Justice of the Common Pleas, resignation of office by, iv. 316.
- Chancellors, Lives of the, by Lord Campbell, references to, i. 1, n.—Roger, Bishop of Salisbury, 18—Wm. Longclump, 43—Hubert, 47—John Mannes, 65—Simon de Montfort, 72—Le Scrope, 102—Parnyng, 108—Knyvet, 111—Sir John Fortescue, 165—Wolsey, 189—Bromley, 243—Sir C. Hatton, *ib.*—Lord Ellesmere, 332—Lord Bacon, 356, 365—Lord Coventry, ii. 24—Bishop Williams, 28—Lord Shaftesbury, 292—Jeffreys, 383—Lord Cowper, 438—Lord Maccafield, iii. 16—Lord Hardwicke, 54—Lord Northampton, 126—Lord Camden, 340—Lord Loughborough, iv. 7—Lord Erskine, 194—Lord Eldon, 276.
- Chancellor, Lord, costume of the, in early times, iv. 145.
- Chancery, Inns of, deserted by students at law and tenanted by attorneys, ii. 180, n.—Court of, formerly held in Westminster Hall, ii. 360—evening sittings formerly held in the Court of, iii. 110.
- Charles I., arbitrary measures of, i. 292, 375, 382; ii. 4, 23—assent by, to the bill for the attainder of Lord Strafford, 97—trial of, 121—noble demeanour of, 123—place of the execution of, 125—his line of defence recommended by Sir Matthew Hale, 169—prerogative of cashiering judges unscrupulously exercised by, i. 343, 441; ii. 82, 281.
- Charles II., birth of, ii. 87—Chief Justices of King's Bench appointed by, ii. 249—Judges superseded by, for expressing constitutional opinions, 264, 270—anxiety of, for the conviction of Lord Grey de Werke, 292—attempts of, to exercise the dispensing power, 346—reports of decisions compiled during the reign of, 318—courts of justice turned into instruments of tyranny during the reign of, 319—victory of, over the Whigs, 321—the memorable Quo Warranto case against the City of London undertaken by desire of, 322—the appointment of Jeffreys to the office of Chief Justice of the King's Bench repugnant to the wishes of, 332—Lord Chancellor during the exile of, 338—treatment by, at Restoration to the remains of Blake and Cromwell, 379—grants, by way of annuity, made by, out of the hereditary revenues of the Crown as a compensation to those who had been defrauded by closing of the Exchequer, 423—obscene publications during the reign of, iii. 37—memorable declaration of, from Breda, i. 137, 187, 196, 221.
- Charlton, Sir R. de, Chief Justice of Common Pleas, death of, i. 135.
- Charlton, Sir Job, Justice of Common Pleas, dismissed for refusing to support the King's dispensing power, ii. 346.
- Charnock and others, trial and conviction of, before Lord Holt for treasonably engaging in the attempt against the life of William III., ii. 413.
- Charter of the Forest, 1224, a reasonable concession to nobility and people, annulled, i. 58.
- Chatham, Earl of, ii. 123, 124, 217—Militia Bill introduced by, 101—his first ministry, 328, 335—his contests with Lord Mansfield, 222, 243, 261—second ministry of, 349—attack on Lord Mansfield, 352—suggestion for an action against House of Commons for the treatment of Wilkes, 355, 369—death of, 390—funeral, 393.
- Channey, Sir H., History of Hertfordshire by, ii. 301.
- Cheering, early parliamentary mode of, i. 98, n. 411.
- Chester, Bishop of (Wilkens), his friendship with Lord Hale, ii. 222—endeavours by, to procure the "Comprehension Bill," 223.
- Chester, Chief Justices of: Jeffreys, Herbert, ii. 340—Willers, iii. 116—Garrow, Copley, 118, n.—Kenyon, iv. 51—facetious remark by Lord Castlereagh respecting the office of, 281—usually held by the Attorney-General, iii. 118.
- Chesterfield, Lord, anecdote of, related by Lord Stanhope, iv. 266.
- Cheyne, Sir W., Chief Justice of King's Bench, a very obscure man, i. 165.
- Chiffinch, superintendent of intrigues of every description at Whitehall, ii. 264—intrigues of, in favour of the Duke of Monmouth, 265.
- Chippendale Election Petition, adverse decision respecting, caused the resignation of Sir R. Walpole, iii. 121.
- Cholmley, Sir Roger, Chief Justice of King's Bench, a judge of no eminence, i. 211.
- Christian, Mr. Chief Justice of the Isle of Ely, decision of, rejected by Lord Ellenborough, iv. 289.
- Christian, Rev. H., of Docking, Norfolk, first tutor of Lord Ellenborough, iv. 150.

- Christ-Church College, Oxford, portrait of
 Lord Mansfield, by Martin, preserved
 at, iv. 38.
- Church of England, tolerance and excel-
 lence of its forms of government, iii.
 80—practice of allowing interments in
 churches belonging to, censured by
 Lord Hale, i. 233—church-ales, ordi-
 nance against, by Chief Justice Richard-
 son, ii. 18—sacraments of, required to
 be taken by electors and representa-
 tives, 427—by King's Counsel, iv.
 385.
- Churchill, Sir John, Attorney-General to
 the Duke of York, promoted to be
 Master of the Rolls, ii. 340.
- Cibber v. Sloper, infamous action of, for
 Crim. Con. tried in 1738, iii. 203.
- Cicero, the philosophic works of, if at-
 tentively studied, useful in determining
 the construction and just fulfilment of
 contracts, iii. 92, 182, 282—treatise of,
 de Senectute, much studied by Lord
 Mansfield in his retirement, iv. 2.
- Cider-Cellar in Maiden Lane, social scenes
 at, described, ii. 385, n.; iv. 333, n.
- Cider-Tax imprudently introduced by
 Lord Bute in 1763, iii. 339.
- Circuits, anecdotes of, iv. 161—Oxford, ii.
 119, 352, 388; iii. 21; iv. 335—the
 nervous barrister of, iii. 134, 140—
 serious accidents on, iv. 336—Western,
 ii. 19, 204; iii. 440—Norfolk, ii. 357—
 Northern, ii. 388—former limits of, i.
 100; iv. 160—Midland, i. 225—causing
 the lightest amount of labour, preferred
 by the senior Judges, iv. 399—expenses
 of Judges on, 403—mode of travelling
 on, before railways, ii. 19, 388; iv. 48,
 345.
- Clanricarde, Marquess of, family of, settled
 in Ireland at a remote period, i. 54.
- Clarence, Duke of, brother of Edward IV.,
 trial of, i. 180—story of his being
 drowned in a butt of wine, disproved,
 181.
- Clarendon, Earl of, Lord Chancellor,
 History of the Rebellion by, quota-
 tions from, i. 423, 433; ii. 122—address
 by, to Chief Justice Hyde, 144—to
 Chief Justice Keylinge, 150—promises
 by, to the Presbyterian party, 187, 195
 —congratulatory speech by, to Sir M.
 Hale, 197.—See 'Lives of the Chancel-
 lors', iii. 110.
- Clarendon, second Earl of, Extracts from
 the Journals of, relating to Sir M. Hale,
 iii. 12.
- Claret, verses on the first taxation of, in
 Scotland, by John Holme, iv. 29.
- Clarges, Sir Thomas, appeal by, against
 the exclusion of Chief Justice Wright
 from the Indemnity Act, ii. 378.
- Clarke, conduct of James II. in respect of
 the dispensing power justified by, ii.
 340, n.
- Clarke, Sir Thomas, Master of the Rolls,
 educated at Lichfield School under Mr.
 Hunter, with many distinguished men,
 iii. 131, 164.
- Classical literature despised by Lord Coke,
 i. 395—disregarded by Lord Holt, iii. 4
 —a recreation to Lord Mansfield, iv. 2
 —cultivated by Lord Tenterden, neg-
 lected by Lord Eldon, unknown to
 Lord Kenyon, 409.
- Clement's Inn, chambers in, occupied by
 attorneys, ii. 315.
- Clench, Dr., trial of Harrison for the
 murder of, before Lord Holt, ii. 408.
- Clergy of the Church of England, dis-
 qualification of to sit in the House of
 Commons established, iv. 204.
- Clergy, benefit of, proceedings in Court
 when privilege claimed, reported by
 Sir James Dyer, i. 220.
- Clerk (Chief) of the King's Bench, ap-
 pointment of, attempted by the Duke
 of Buckingham, i. 337—large salary at-
 tached to the office of, commuted for
 the life of the first Earl of Ellenborough,
 iv. 307.
- Cleveland, Duchess of, marriage of, with
 the famous Beau Fielding, pronounced
 invalid, iii. 30.
- Cleves, Anne of, divorce of, decreed on
 the alleged invalidity of the marriage
 of, i. 204.
- Clifford, Mr., application by, for a Writ
 of Habeas Corpus on behalf of Ben-
 jamin Flower, iv. 110—altercation of,
 with Lord Kenyon, in reference to this
 application, 111.
- Clive, Mrs. Kitty, the celebrated actress,
 performances of, at the theatre in Lin-
 coln's Inn Fields, iii. 194.
- Clive, Sir Edward, Justice of the Common
 Pleas, judgment of, in *Buxton v. Min-
 gay* respecting medical men, iii. 128, n.
- Clopton, Sir Walter, Chief Justice of the
 King's Bench, *tempore* Richard II.,
 i. 146, n.
- Coalition Ministry recommended by Lord
 Mansfield in 1778, iii. 395—formed in
 1783, 424; iv. 61, 64; dismissed, 66.
- Cochrane, Lord, trial and conviction of, in
 1814, for an alleged conspiracy to de-
 fraud, iv. 278—re-election of, for West-
 minster, 280—restored since to his rank
 in the navy, 281, n.
- Cobbett, William, observations of, on the
 business of "an attorney," iv. 42.
- Cockell, Sergeant, fame of, on the Northern
 Circuit, iv. 199.
- Cock-fighting, a barbarous diversion, to be
 treated as illegal in a court of justice,
 iv. 226.
- Codrington, Mr., a licentious young man,

memorable action by, in a wager of "two heirs running their fathers," *iii.* 294.
 Coke, Sir Edward, general merits of, *i.* 258, 262—parentage, 253—education, 264—course of legal studies, 266—aversion of, to poetry and the drama, 267—first brief, 268—counsel in Shilley's case, 268—marriage, made Solicitor-General, 290—elected Speaker of the House of Commons, 292—made Attorney-General, 296—his brutal conduct on the trial of Lord Essex, 298—death of his first wife, 299—breaks a Canon of the Church to obtain a second wife, 302—insulting language to Sir Walter Raleigh, 304—conducts prosecution of Guy Fawkes, 308—made Chief Justice of Common Pleas, 314—meritorious conduct as a Judge, 316—judgment in the case of the Postnati, 317—opposes Court of High Commission, 318—resists the claim of the King to sit and try causes, 319—denies the power of the King to alter the law by proclamation, 322—made Chief Justice of England, 326—gives a qualified support to "benevolences," 327—laudable conduct in Peacham's case, *ib.*—exertions against the murders of Sir Thomas Overbury, 329—incurs the King's displeasure for his firm conduct respecting Commendams, 333—frivolous charges against, 338—suspended from his office, *ib.*—proceedings against, for alleged errors in his reports, 339—conduct when dismissed, 344—and after his removal, *ib.*—strange proceedings respecting the marriage of his daughter with Sir John Villiers, 349—restored to the Privy Council, and attends its judicial proceedings, 356—elected to Parliament, 359—treatment of a presentation copy of the *Novum Organum*, 360—finishes his reports and commentaries on Littleton, 361—exposes the abuses of monopolies, 364—his share in the impeachment of Lord Bacon, 365—becomes leader of the opposition, and vindicates the privileges of Parliament, 370—causes a protestation to be entered on the journals, which is torn out by the King, 371—is committed to strict custody in the Tower, 373—proceeds with his commentary on Littleton, 374—avoids a banishment to Ireland, 375—conducts the impeachment of Lord Middlesex, 376—motion for inquiring into the expenditure of the Crown, 378—appointed Sheriff of Bucks, and serves the office with distinction, 379—elected for Norfolk, *ib.*—defence of public liberty by, 382—his patriotic regard for the glory of England, 384—brings forward the Petition of Right,

384—which receives the royal assent, 383—denounces the Duke of Buckingham, *ib.*—retires from public life, occupations, 391—dislike to medicine, *ib.*—the supposed adviser of Hampden, 394—death, contempt for literature, 396—greatness as a lawyer, a judge, a reporter—reports of, when published, 397—his habits and manners, 404—unjustly censured by Hallam, 406.
 Coke, Lady Frances, a rich and pretty heiress, betrothal of, to Sir John Villiers, by her father, *i.* 348—carried away and concealed by her mother, indignant at the proceeding, 349—rescued by Sir Edward Coke, by means of an armed band, *ib.*—letter of, to her mother, 354—marriage ceremony performed in the presence of the King and Queen, 356—raised to the peerage, elopes with Sir R. Howard, 356—son of, disinherited for illegitimacy, *ib.*—reconciled to her father, 362.
 Coke, Robert, benchet of Lincoln's Inn, epitaph on, by his son, *i.* 284, *u.*
 Coke, Roger, grandson of the Chief Justice, author of 'Justice Vindicated,' published in 1660, *i.* 407.
 Colbatch, Dr., author of 'Jus Academicum,' attachment granted against, by the Court of King's Bench, *iii.* 21.
 Colchester, Lady, monody by, on death of Lord Ellenborough, *iv.* 307.
 Colchester, Lord, rude retort of Lord Kenyon to, before a committee of the House of Commons, *iv.* 142—advice on legal studies given by, to Lord Tenterden in 1787, 332.
 Coleridge, S. T., 'Tale-talk' of, anecdotes of Lord Kenyon related in, *iv.* 141.
 Collar of SS appropriated to the Chief Justices of England from a remote period, *i.* Preface vi.; *ii.* 152; *iv.* 183, 352—the personal property of each Chief Justice, and often preserved as an heirloom, *iii.* 107—error respecting, *iv.* 108.
 Collier's Ecclesiastical History quoted, *i.* 369.
 Collins, Arthur, English Peerage, edited by, a book of authority, *i.* 99.
 Colonies, principles laid down by Lord Mansfield for the proper administration of the law in, *iii.* 283—legal remedies by British subjects against governors of, for false imprisonment and other violations of law, 297; *iv.* 207—course of policy to be adopted towards rebellious, *i.* 233; *iii.* 379, 389.
 Combe, Mr., conversation of, with Lord Mansfield, respecting the first French Revolution, *iv.* 8.
 Commentary on Littleton, by Coke, supposed to contain the whole common law of England as then existing, *i.* 399.

- Commentaries on the Laws of England, by Sir William Blackstone, references to, i. 158, 177; ii. 157, 220; iv. 84.
- Commerce, attempt to tax foreign productions, without the authority of Parliament, in 1604, i. 276.
- Commercial law of England settled by the decisions of Lord Mansfield, iii. 169, 277, 281.
- * Commoner, the Great, epithet applied to the first Earl of Chatham, iii. 124.
- Common Law, History of the, by Sir Matthew Hale, i. 83, 90; ii. 69, 74.
- Common Pleas, Court of, its creation by Edward I., i. 84—monopoly of practice enjoyed in, formerly by the Serjeants, ii. 293—easy duties of the Judges in, i. 129, 206, 258; iii. 123, 127, 135, 145—Chief Justices of: De Weyland, i. 85—De Hengham, 91—Howard, 99—De Staunton, 103—Belknappe, 116, 128—De Charlton, 135—Thyrnynge, 141—Markham, 156—Baldwin, 205—Montagu, 206, 208—Brown, 217—Dyer, 211—Anderson, 258—Gawdy, 314—Coke, 314—Hobart, 325—Richardson, ii. 13—Heath, 41—Bankes, 93—Bridgman, 196—North, 234—Pemberton, 256—Jones, 309—Bedingfield, 382—Wright, 383—Pollexfen, 388—Treby, 426—Reeves, iii. 46—Willers, 85, 126—Pratt, 26, 340—De Grey, 308—Wilmut, 141—Eyre, iv. 101—Lord Eldon, 119—Dallas, 168—James Mansfield, 247—Gibbes, 287, 297, 353—Best, 355, 369.
- Commons, House of. See Parliament.
- Commonwealth period, the prudence of leading men during, deserving of praise, ii. 171.
- Comprehension bill, prepared by Sir M. Hale and the Bishop of Chester, to satisfy the scruples of the Nonconformists, ii. 197, 221.
- Compton, Sir Thomas, Judge of the Admiralty Court in the reign of James I., i. 321.
- Conant, Vice-Chancellor of Oxford, letter from, to Sir Matthew Hale, offering the representation of the University, ii. 184.
- Conformity, Act against occasional, passed, ii. 197.
- * Consolidation Rule, an improvement introduced by Lord Mansfield in actions on marine policies, iii. 279, n.
- Consuls of foreign states not entitled to the privileges of ambassadors or public ministers, iv. 227.
- Contempts, power of Superior Courts to punish for, in a summary way, iii. 152.
- * Contingent Remainders, famous essay on, by Mr. F. Arne, iii. 309.
- Contractors with the Government, debate respecting their right to sit in the House of Commons, iii. 423.
- Convention Parliament, a meeting of the states of the realm, not summoned by regal authority, i. 141, n.
- Cony, George, merchant of London, committed to prison for refusing to pay duties imposed by Cromwell, without sanction of Parliament, ii. 62.
- Cooke, Sir Thomas, trial and acquittal of, for treason, before Chief Justice Markham, i. 168, 174.
- Cooke, Mr. Secretary, speech of, on the Petition of Right, i. 385.
- Copley, J., R.A., portrait by, of Lord Mansfield, painted a few weeks before his death, iv. 38.
- Copley, Sir John. See Lyndhurst.
- Corbett, Deputy-Warden of the Fleet, trial and acquittal of, for the murder of Robert Castell, iii. 46, 59.
- Corn-laws, remarks on the, by Sydney Smith, iv. 132—repeal of, urged by Lord Coke, i. 368.
- Cornish, Alderman, inhumanly hanged and beheaded in Cheapside, by order of Jeffreys, ii. 335—unblushing violation of the rules framed for the protection of innocence, by the Judge, on trial of, 345, 411.
- Cornwall, Duchy of, cause of its revenues being granted to the Prince of Wales, iv. 204.
- Cornwallis, Earl of, surrender of the British army under, to Washington, iii. 422—Commander-in-Chief during the Irish Rebellion of 1798, iv. 257.
- Coronation oath, the, interrogatories of George III. to Lord Kenyon respecting, iv. 139.
- Coroner, chief, of England, office held by Chief Justice of England, i. 3—duties belonging to, ii. 44.
- Corporation and Test Acts, debate on the repeal of, iv. 384.
- Cottu, M., the French advocate, remark by, on the ease and pleasure with which Mr. Justice Bayley discharged his duties at Nisi Prius, iii. 268.
- Coulson v. Coulson, solemn decision in, supporting the rule in Shelley's case, iii. 308.
- Counsel, full defence by, formerly refused on trials for high treason and in criminal cases, ii. 59, 138, 369, iii. 46, n.—permitted by statute of William III., iv. 55—when assigned by the Judge to defend a prisoner compellable to act, ii. 263—duties of, towards their clients, explained by Lord Holt, 414—practice for all the, to address the jury altered by Lord Mansfield, 273—required formerly to take the sacrament on obtaining a silk gown, 385—regulations about bags and gowns of, iv. 181.
- Courier newspaper, conviction of its editor

- for a libel on the Emperor of Russia, iv. 105.
- Courts of Common Law, origin of, i. 3.
- Coventry, City of, election of Sir Edward Coke by, as a representative in 1624, i. 377.
- Coventry, Lord Keeper, ii. 16, 23—pony to Lord Coke when called Serjeant, 314.
- See 'Lives of the Chancellors,' ii. 510.
- Cowell, his book publicly burnt by order of the House of Commons, i. 397, n.
- Cowper, Lord, made Chancellor by the favour of Duchess of Marlborough, ii. 438—letter of, to George I., on the state of the Bench of Judges in 1714, iii. 18—compliments by, to Lord Mansfield, 199.
- See 'Lives of the Chancellors,' iv. 257.
- Cowper, W., stanzas by, on the destruction of Lord Mansfield's library, iii. 412—statement of, that all the manuscripts of Lord Mansfield were burnt by the mob, iv. 18—limited accomplishments of, 14.
- Cowper's Law Reports, one of the best ever published in England, iii. 277.
- Cox, Chancery reports by, in the time of Lord Kenyon, iv. 78.
- Coxe, W., Archdeacon, character of Lord Ellenborough when at Cambridge, described by, iv. 152.
- Craftsman, opposition journal, editor of, prosecuted for the publication of a letter, purporting to have been written at the Hague, iii. 47, 430.
- Craig, judicial work by, De Feudis, much appreciated and studied by Lord Mansfield, iii. 187.
- Cranburne, trial of, before Lord Holt for participation in the assassination plot, ii. 469.
- Creevy, Thomas, M.P., doubtful doctrine expounded on the memorable prosecution of, iv. 229.
- Creswell, Justice, resigns his place of Judge on the execution of Charles I., ii. 107.
- Crewe, Sir R., noble independence of character, i. 434—parentage, 435—skill of, in heraldry and genealogy, elected Speaker of the House of Commons, 437—retires from Parliament—appointed Chief Justice of the King's Bench, 438—famous speech of, in the Oxford Peerage case, 439—displaced from office by Charles I., 441—constitutional opinions expressed by, to the Attorney-General, 45—letter of, to the Duke of Buckingham, 443—erects a mansion at Crewe, mode of living in retirement, 445—panegyric upon, by Hollis, in the Long Parliament, death of, 446—descendants ennobled, 448.
- Cricklade, bill for disfranchising the corrupt electors of, iii. 422.
- Crim. Con., actions, principle of assessing damages in, discussed, iii. 299, 300; iv. 119, 219.
- Criminal Procedure, iii. 46, 50—improvements in, during the Commonwealth, 304—amendment of, in 1848, 21.
- Criminal Trials, practice of questioning prisoners in, formerly allowed, i. 265—witnesses called on for prisoners first allowed to be examined on oath, ii. 409—conduct of Judges on, previous to the Revolution, 411.
- Clocks, not in general use before the close of the 14th century, i. 90.
- Croke, Mr. Justice, chosen Speaker of the House of Commons, i. 275—reports of cases by, in the reigns of Elizabeth, James, and Charles, 315, 442; ii. 8, 22—declares against the legality of ship-money in Hampden's case, 25.
- Crompton, an accurate judicial writer, book published by, *tempore* Elizabeth, on the authority and jurisdiction of the Courts of Law, i. 151.
- Cromwell, Lord, leader of the Puritans, proceedings of, against the Vicar of Northingham for scandalum magnatum, i. 288.
- Cromwell, Oliver, maiden speech by, i. 390, n.—Council of State and Long Parliament dissolved by, ii. 55, 128—Free Parliament called by, in 1654, 56—directs the execution of a Portuguese nobleman convicted of murder, 57—treatment of George Cony by, 62—derisive treatment by, of Magna Charta and the Commonwealth Judges, 63—Judges appointed by, 70, 77, 105—House of Lords restored, and Peers created by, 73, 113—ascendancy acquired by, in the Government, 101, 103—battles of Dunbar and Worcester fought and gained by, 109—wish of, to be proclaimed King, 112—death of, 114—Jamaica conquered from Spain by, iii. 283.
- Cromwell, Richard, feeble exercise of the government by, ii. 114.
- Cromwell, Secretary, unjustifiable proceedings against, for negotiating the marriage of Henry VIII. with Ann of Cleves, i. 204.
- Crook, John, a loyal Quaker, trial and conviction of, before Chief Justice Foster, for refusing to take oath of allegiance to Charles II., ii. 139.
- Cropley, Sir John, father-in-law of Lord Holt, iii. 13.
- Cruise, on Dignities, account contained in, of the Oxford Peerage case, i. 446.
- Crusade, the new, in 1188, encouraged by Richard I., i. 37.
- Cullender, Rose, improper conviction of, for witchcraft in 1665, before Sir M. Hale, ii. 215.

Culloden, events after the battle of, iii. 98.
 Cumberland, Duke of (William), Commander-in-Chief during the rebellion of 1745, iii. 99—unpopularity of, 94, 236—(Henry) action against, for *Crim. Con.*, 299—deficiency of, in the rudiments of educational attainments, 300.
 Cumberland, Richard, description by, of the interview between Viscount Sackville and Lord Mansfield at Stoneland, iii. 438.
 Curia Regis, its origin, i. 3, 5, 17—rolls of, 44.
 Curran, Right Hon. J. P., anecdote of, when Master of the Rolls in Ireland, iv. 358.
 Cuthill, a bookseller, censurable conviction of, iv. 104.
 Czar Peter, ambassador of, in London, being arrested, statute of Anne passed to soothe the feelings of the European powers, iv. 227.

D.

DALLAS, Chief Justice of the Common Pleas, counsel for Warren Hastings, iv. 169, 188—polished manner of—address of, 188—the celebrated epigram on Burke composed by, 189.
 Dalrymple's *Annals of Scotland*, extracts from, i. 26, 81.
 Damage, consequential, doctrine of, checked by Lord Kenyon, iv. 115.
 Dampierre, Justice, ability of, as a Judge, iv. 215, 296.
 Danby, Dick, hairdresser in the Temple, memoir of, iv. 310, n.
 Dangerfield, his infamous character, ii. 262—commitment of, by Chief Justice Scroggs, 263.
 Darnel, Sir Thomas, resistance of, to "the Loan" illegally imposed by Charles I., ii. 1—commitment of, 2—refusal of the Judges to release, 3—indignation of both Houses of Parliament at the imprisonment of, 4—splendid argument of Bramston on behalf of, 23.
 Dauncy, Mr., an eminent counsel, leader on the Oxford Circuit, iv. 341.
 Davenport, Serjeant, application of, to Lord Thurlow for the office of Chief Justice of Chester refused, iv. 61.
 Davison, Secretary, scandalous mockery exhibited by the prosecution of, for sending off the warrant for the execution of Mary Queen of Scots, i. 243, 257.
 Davy, Serjeant, witty remark by, on the inhabitants of the Western Counties, i. 155.
 Dayrell, of Littlecot, legend respecting, narrated by Aubrey and Sir W. Scott, i. 269.
 De Berenger, trial and conviction of, in 1814, for causing a rise in the Funds by spreading false intelligence, iv. 279.
 Debating Societies at the Inns of Court, early existence and advantages of, iii. 188.
 Debi Sing, Rajah, alleged cruelties of—evidence respecting, rejected by the House of Lords, iv. 175—speeches relating to, 176.
 Debt, imprisonment for, abolition of, discussed, iv. 89—Pasquinade against law of, 98—opposition of Lord Ellenborough to every improvement in the law relating to, 295.
 Deering, Sir Edward, motion by, to eradicate Bishops, Deans, Chapters, and all officers and officials belonging to them in 1641, ii. 97.
 De Burgh, Hubert, birth, i. 54—character of, by Shakespeare, 55—present at Runnymede, 56—appointed Chief Justiciar, *ib.*—created Earl of Kent, character by Lingard and Hume, 58—removed from office, takes to sanctuary, 59—confined in the Tower, 61—escapes, *ib.*—impeached, pardoned, death, 62—panegyric on, 63.
 De Grey (Lord Walsingham), Chief Justice of Common Pleas, decision of, in *Perrin v. Blake*, iii. 308—elaborate argument by, when Attorney-General, on the legality of General Warrants, 341.
 De la Pole, Michael, Chancellor of England to Richard II., i. 115—See 'Lives of the Chancellors,' i. 286.
 D'Eon, Chevalier, lawsuit respecting the sex of, iii. 296—death of, 298.
 De Spencer, Hugh le, Chief Justiciar, i. 67—at the battle of Lewes, 69—killed at Evesham, 69.
 De Thornton, Gilbert, Chief Justice of England, salary assigned to, i. 93.
 De Weyland, Chief Justice, a great lawyer, accused of corruption, absconds, i. 91—captured, banished, 92—dies in exile, character of, by O. St. John, 92, n.
 Delamere, Lord, trial of, for treason, before Jeffreys, ii. 342—acquitted, 344.
 Delaval, Sir F. Blake, charge against, of conspiracy to seduce a young female, iii. 298.
 Demosthenes, Latin Essay, criticising the speeches of, by Lord Mansfield, iii. 180.
 Denham, Sir John, lines on the river Thames by, iii. 218.
 Denison, Sir Thomas, Justice of King's Bench on the appointment of Lord Mansfield, iii. 139—a Judge of deep learning and independence of mind, 266.
 Denman, Lord, patient and fair conduct of, as a Judge, ii. 412—serious illness of, iv. 39—first Chief Justice of England

who attended the House of Lords without his judicial robes, 239.

Denny, Vicar of Northampton, defended by Coke, when prosecuted by Lord Cromwell, i. 298.

Desborough, Colonel, declaration by, in favour of a R-public in 1652, ii. 112.

Despard, Colonel, trial, conviction, and execution of, for treason, iv. 239.

Devizes, Richard of, extracts from History by, i. 34, 40.

Devon, Prince's Worthies of, errors in, i. 155, 164.

Devon, Sir Fred., Issue Rolls of Exchequer, edited by, i. 129, 133, 135.

Difficulties Nuge, treatise by Sir M. Hale touching the Torricellian experiment, ii. 231.

Digby, Sir Everard, trial and conviction of, for participating in the Gunpowder Plot, i. 311.

Directory of public worship, framed to supersede the Liturgy in 1642, ii. 66.

DIsraeli's Life and Character of James I., extracts from, respecting Lord Coke, i. 344, 373.

Disasters, remedies extended to, by Lord Mansfield, iii. 396-398.

Divine, famous assembly of, at Westminster in 1644, who framed the standards of Presbyterian faith, ii. 168.

Divine right of Kings, opinions on, ii. 379.

Doe d. Barthwistle v. Vardill, decision of King's Bench and House of Lords in, questioned and complained of, iv. 374.

Douglas Cause, the, memorable speech of Lord Mansfield in favour of the claimant in, iii. 321.

Dover Castle, defence of, against the French in 1215, by Hubert de Burgh, i. 66—held by De Montfort, Earl of Leicester, 70.

Drinking customs at the period of the Restoration, ii. 161.

Dublin and the Irish, *tempore* Geo. I., description of, by Chancellor Bowes, iii. 82.

Dudley, Sir Robert, book composed by, for bridling the impertinence of Parliaments, ii. 86.

Duffeur, conviction of, for publishing an alleged seditious libel, iv. 93.

Dugdale, Sir William, Origines Juridicales by, i. 2, 71, 109—Baronage by, 15, 63—supposed motives of, for his erroneous statement about Chief Justice Scroggs, ii. 251.

Dunbar, battle of, gained by Cromwell, ii. 109.

Dunning, harsh condemnation by, in the House of Commons, of the decision of the Court of King's Bench in *Rex v. Almon*, iii. 369—always in his element in a debate in the House of Commons,

iv. 14—vast business and wealth of, as Solicitor-General, iii. 367; iv. 50—penury and genius of, 48—is created a Peer, 60—bombast gown worn by, when a Nisi Prius leader, 338, n.

Dun, Amy, trial and execution of, for witchcraft at Cambridge in 1655, ii. 215.

Durham Cathedral, erected by Bishop Carlisle, i. 16—the Galilee in, by Bishop Pusey, 41.

Dyer, Sir Edward, the poet, Chancellor of the Garter, i. 212.

Dyer, Sir James, Chief Justice of Common Pleas, i. 211—parentage, early genius for reporting, *ib.*—Speaker of House of Commons, 213—prosecutes Throckmorton, 214—made a Judge—217—Chief Justice of Common Pleas, *ib.*—his Reports valuable records of English jurisprudence and manners, 213, 218, 227—illustrations, 219, 224—conduct as a Judge assailed, 225—death and epitaph, 226.

E.

ECCLIASTICAL PATRONAGE, proper exercise of, by Lord Coke, i. 334.

Edinburgh, City of, bill to disfranchise, as a punishment for the alleged misconduct of its inhabitants in the murder of Captain Porteous, iii. 96—speech by Lord Mansfield against the bill, 100.

Education, system of, in Scotland at the commencement of the 18th century, iii. 166.

Education, legal, system of, pursued in England, iii. 185—attendance in the Courts at Westminster essential to, 202.

Edward I., the principality of Wales brought into subjection by, i. 35—appointed arbitrator between Bruce and Balliol, 81, 94—decision of, in favour of Balliol, 81, 96—acts as peacemaker between the Kings of France and Aragon, 88—the principles of English jurisprudence systematized by, 83—Judges tried and imprisoned by, for taking bribes, 89—Judges appointed by, to take assizes throughout the realm, 100—Jews banished from England by, ii. 276—famous law treatise, called *Fleta*, written in the reign of, 279—statute respecting right of property in vessels wrecked, passed in reign of, iii. 291.

Edward II., accession of, i. 91, 99—Judges appointed by, 100.

Edward III., authority of, established, by deposing his mother and her paramour, i. 102—confidence reposed by, in Thorpe, Chief Justice, 106—famous statute of Treasons passed in 25th year of, 109—prosecutions under it, 173, 209; iii. 93;

- iv. 58—Duchy of Cornwall granted by, to his son, to relieve himself and future monarchs from maintaining the heir apparent at their expense, 204.
- Edward IV.**, indefeasible hereditary right of, to the Crown argued, i. 167, 171—Lancastrians executed by order of, 172—174—driven into exile, 178—lands at Ravenspurgh, gains a victory at Barnet, and the throne, 179—accusation of High Treason brought by, against the Duke of Clarence, 180, 181—death of, from licentious indulgences, 184.
- Edward VI.**, large grants of abbey lands in Derbyshire by, to the Cavendish family, i. 113—will of, in favour of Lady Jane Grey, prepared by Chief Justice Montagu, 208.
- Eleanor**, Queen, extensive continental dominions of, enjoyed in her own right from Picardy to Navarre, i. 20—imprisonment of, in Winchester Castle, by order of the king, 27—evidence by, in the Fauconbridge Legitimacy case, 49.
- Election Petitions**, mode of deciding the merits of, before the Grenville Act, iii. 113, n.
- Edon**, Earl of, cause of the hostility entertained by, to Lord Mansfield, iii. 264—failure of, as a debater in the House of Lords, iv. 14—honourable conduct of, in the Westminster Scrutiny debate, 72—character as an Equity Judge, 81—remarks by, when Chief Justice of the Common Pleas, on the duties of juries in awarding damages in actions for criminal, 119—speech of, on the incongruous position of a Chief Justice being a Cabinet Minister, 251—letter from, to Lord Ellenborough, relative to an interview at Windsor with George III. and his physicians during the King's illness in 1811, 275—position of, with the Prince Regent, before and after the hopeless recovery of the King, 277—refusal by, to grant an injunction against piracy of a poem by Lord Byron, on the ground of its being atheistical, 366, n.—inexplicable conduct of, in withholding a peerage from Sir Charles Abbott, 378—antipathy of Canning and Scarlett to, 380—opposition by, to reforms in the Law, 390.—See 'Lives of the Chancellors,' vii. 1.
- Elgin**, Earls of, descent of, from Robert de Brus, Chief Justice of King's Bench, i. 92.
- Eliot**, Gilbert, Lord President of the Court of Session, verses by, to Lord Mansfield, iii. 201.
- Eliot**, Sir John, prosecution of, in the Star Chamber for speeches made in the House of Commons, ii. 5, 38.
- Ellenborough**, Lord, parentage, iv. 148—birth, 150—education at Charter House, at Cambridge, with Gibbs, Le Blanc, and Lawrence, 151—character of, by Archdeacon Coxe, 152—studies the law, 155—diligence as a special pleader, 56.—successful practice under the bar, 157—called to the bar, 158—joins the Northern Circuit, 159—slow progress in London, 162—courtship and marriage, 163—leading counsel for Warren Hastings, 165—first speech on the trial, 169—contests with Burke and the other managers on questions of evidence, 171—Argument in Debi Sing's case, 176—fear of Sheridan, 179—opening speech for the defence, 180—proemium and peroration to the Begum charge, 182—termination of the trial after 145 days' hearing, 189—increased amount of business, 190—resentment of Lord Kenyon's ill-usage, 191—opposed to Erskine in *Rex v. Walker*, 192—conducts prosecution against Readehead Yorke, 194—triumph over Sheridan, in the trial for aiding the escape of O'Connor, 196—reconciliation with the Tories, 199—made Attorney-General, 201—knighted, and enters Parliament, 202—speech against the right of a priest in orders to sit in Parliament, 204—speech on the claim of the Prince of Wales to the revenues of the Duchy of Cornwall, 204—speech on the prosecution of Governor Wall, 205—made Chief Justice of England, and created a Peer, 212—qualifications as a Judge, 214—conduct as Chief Justice, 216—legal decisions of, in various causes, 218—233—speeches in the House of Lords, 234—exposure of the Athol job by, 235—maintains the right of the Crown to the military services of all subjects, 237—opposes the removal of the Roman Catholic Disabilities, 239—257—presides with applause at the trial of Colonel Despard and others for high treason, 240—at the trial of Peltier for a libel on Napoleon, 243—withdraws from political warfare, on the return of Mr. Pitt to power, 245—on the death of Mr. Pitt, becomes a member of the Cabinet, 246—motives for consenting, 247—debates in both Houses respecting the incongruity of the positions of Chief Justice and a Cabinet Minister, 248—252—correspondence of, with Mr. Perceval, 252—255—votes for the impeachment of Lord Melville, 256—letter to, from Lord Grenville, 257—speech on the restoration of the Danish Fleet, 258—conduct as Judge on the trial of Mr. Perry, 259—264—on the trial of Leigh Hunt, for a libel in the 'Examiner,' 264—speech in reply to the motion of Lord Holland, in reference to informations, ex-officio, for libel, 265—speech respecting the Deli-

cate Investigation, 267-272—support of, to the severe Alien Bill of 1816, 272—opposes Lord Grey's motion for censuring Lord Sidmouth, 273—a member of the Queen's Council as custodian of the King's person during the Regency, 274—interesting letter of Lord Eldon to, respecting the condition of the King, 275—conduct of, on the trial of Lord Cochrane and others, 278—on the trial of Mr. Watson for treason, 281—prayer composed by, 283—conduct on the trial of House for publishing a profane libel, 284—severe illness of, 286—resignation of office by, 288—letter of condolence to, from George IV., 289—death of, 290—epitaph on, 291—character of, 292—a severe penal code approved of by, 293—aversion of, to the illusory opinions of speculators, 294—opposed to any alteration of the law of Debtor and Creditor, 295—dislike of, to foreign laws, 296— anecdotes and witticisms of, 297-303—dialogue of, with Henry Hunt, 301—In domestic life, 303—figure and manner of, 304—imitations of, by Mathews the comedian, *ib.*—portrait of, by Lawrence, 306—mode of living, descendants, 307—Monody on the death of, by Lady Colchester, 308.

Ellesmere, Lord Chancellor, remark by, on the banishment of Chief Justice Belknappe, i. 134, *n.*—appointed Solicitor-General, 253—a man of great learning and of unexceptionable character, 258—Attorney-General, 291—Master of the Rolls, 296—dispute of, when Lord Chancellor, with Chief Justice Coke, respecting an injunction, 332—inaugural address by, to Chief Justice Montagu, 416.—See 'Lives of the Chancellors,' ii. 179.

Elphin, Bishop of, letters to, from Lord Ellenborough, iv. 247, 249—representations of, to Lord Ellenborough, respecting the Irish Roman Catholics, 257, *n.*

Elyot, Sir Thomas, celebrated philologist, extracts from book by, called 'The Governor,' i. 149, 228.

England, Chief Justice of, office introduced into England by William the Conqueror from Normandy, i. 1—performs the formal duties of Chancellor of the Exchequer upon sudden death or resignation of that minister, 3; iii. 73—denominated Chief Justice of, assigned to hold pleas in the Court of our Lord the King before the King himself, because the King is supposed to personally preside, assisted by the first common-law Judge, i. 84, 319—sent to quell rebellions armed with a commission of array, *ib.*, *n.*, 260—salary of, in the reign of Henry II., 327—title reassumed

by Lord Coke, 326, 417, *n.*—is sworn in privately before the Lord Chancellor, and without specifying takes his seat on the bench with the other Judges, iii. 263, 271—Is chief coroner of England by virtue of his office, having authority to pronounce judgment of attainder on view of the bodies of rebels slain in battle, subjecting their lands and goods to forfeiture, ii. 31, 44—collar of SS worn by, by, Pref. vi., 152—the personal property of, iii. 107—acted formerly as a police magistrate, 11, *n.*—first time ennobled, 36, 63—advantages likely to result when the peerage is conferred on, iv. 235—incongruous and unconstitutional position of, when a Cabinet Minister 219, 251; iii. 329.

English Language, all legal proceedings directed to be carried on in, by statute of George II., iii. 51, *n.*

Erskine, Lord, rapid progress at the bar of, i. 287—speech by, on the privileges of Judges, ii. 311—letter of condolence to Lord Mansfield, iii. 441—failure of, as a Parliamentary speaker, iv. 14—remark on the eloquence of, in Courts of Law, by Lord Mansfield, 31—imitations of Lord Mansfield by, 37—memorable struggle with Justice Buller on trial of Dean of St. Asaph, iii. 430; iv. 69—celebrated speech by, on the trial of Lord George Gordon, iii. 420; iv. 58—on trial of John Frost, 98—on trial of Gilbert Wakefield, 103—on a criminal information for a *jeu d'esprit* on the Earl of Lonsdale, 126—in defence of Mr. Walker, 192—in the House of Lords against the Alien Bill, 273—epigram on Justice Grose by, 108—personal appearance of, described, 107—remarks as to the qualifications of, for the office of Chancellor, by Lord Ellenborough, 247 302—letter of, to Lord Ellenborough, narrating the debate on the Chief Justice being a member of the Cabinet, 250.—See 'Lives of the Chancellors,' vi. 367.

Espinasse, Mr., account by, of the demeanour of Lord Keayon, iv. 92—historical notes of, 146.

Essex, County of, rebellious proceedings in the, during the reign of Richard II., i. 115—execution of the instigators at Chelmsford, *ib.*

Essex, Earl of, mad proceedings of, in planning an insurrection to get possession of the Queen's person and to rid her of evil counsellors, i. 260—vituperative and brutal language of Coke and Bacon towards, on the trial of, 261, 298.

Essex, Earl of, *v.* Capel, action at law tried before Lord Ellenborough for trespass over lands of plaintiff when fox-hunting, iv. 225.

Eustace, Count of Boulogne, the strong castle of Rochester defended by, against William Rufus, i. 10—forced to surrender, owing to a pestilential disease among the garrison, 11.
 Exercises for students at Lincoln's Inn, ii. 163.
 Evesham, victory at, royal authority restored by, i. 67.
 Evidence, rules as to the admission and rejection of, established by the decisions of Lord Mansfield, iii. 304.
 Exceptions, Bill of, its origin and importance, iii. 266—practice respecting, described, iii. 267, n.
 Exchequer, origin of the Court of, i. 84—Chief Barons of the: De Staunton, 103—Perryam, 276—Fleming, *ib.*—Lane, ii. 105—Bridgman, 135—Macdonald, 152, n.—Hale, 195—Montagu, 346—Ward, 426—Parker, iv. 23—Smythe, 23—Gibbs, 353—Lord Abinger, 370, n.
 Exchequer Chamber, its origin and uses, i. 84—a Court of Appeal in cases of Criminal Law from the Assizes and Quarter Sessions, 218.
 Exeter, Duke of, the rack first introduced in the Tower by, in the reign of Henry VI., i. 297, 309.
 Exeter Change, murder committed in, by a Portuguese nobleman, ii. 56.
 Eyre, Sir R., Justice of the King's Bench, resigns office, iii. 34—appointed Chief Justice of Common Pleas—disapproval by, of the Sacheverell impeachment when Solicitor-General, 15.
 Eyre, Sir James, Chief Justice of the Common Pleas, quiet demeanour of, on the trial of Horne Tooke, iv. 101.

F.

FABRIGAS v. Mostyn, important judgment of Lord Mansfield in, as to the right of British subjects to compensation for acts of oppression by governors of colonies, iii. 287.
 Fairfax, General, refusal by, as a Presbyterian, to command an army of invasion into Scotland, ii. 108.
 Falaise, descendants of the celebrated Ariotta of, i. 4—William, King of Scotland, imprisoned in the castle of, 26.
 Fanatics at Cambridge during the Commonwealth, attempts by, to destroy all books except the Old and New Testament, ii. 112.
 Fauconbridge, evidence of Queen Eleanor in the memorable legitimacy cause of, i. 49.
 Fawkenor, Sir Edward, a witness against Lord Lovat, facetious remark to, by the prisoner, iii. 229, n.
 Fawkes, a foreigner, banished for defending the Castle at Bedford against the King, i. 57, n.
 Fawkes, Guy, and others, tried and convicted, before Chief Justice Popham, for the Gunpowder Plot, i. 266.
 Fazakerley, Mr., an eminent counsel, and influential Tory leader in the House of Commons, iii. 431.
 Fearn, Mr., the celebrated conveyancer, sarcastic observations by, on the decision in *Perrin v. Blake*, iii. 309—angry pamphlet by, to Lord Mansfield, *ib.*
 Female chastity, exposition of the laws for the protection of, by Lord Mansfield, iii. 298.
 Fenwick, Sir John, unjust attainder and execution of, ii. 312.
 Finch, Heneage, Solicitor-General, dismissed, for refusing to support the King's dispensing power, ii. 346—one of the counsel for the Bishops, 302—refused to accept any fee, 307, n.—indiscreet statement on the trial by, 368.
 Fineux, Sir J., Chief Justice of King's Bench, i. 187—iripartite division of his career, *ib.*—advanced age, and death, 188.
 Fisher, Bishop, trial and execution of, for denying the supremacy of Henry VIII., i. 195.
 Fitz-Harris, trial and conviction of, for participation in the Popish Plot, ii. 286.
 Fitz-James, Sir John, parentage, early intimacy with Wolsey, i. 189—Chief Justice of King's Bench, 191—ungrateful behaviour to Wolsey, 191—atrocious conduct of, at the trial of Bishop Fisher, 195—Sir Thomas More legally murdered by, 198—execution of Anne Boleyn effected by, 198—death, 199.
 Fitz-Osborne, William, Regent of England, i. 6—Chief Justiciar, 13—conduct at Hastings, created Earl of Hereford and Lord of the Isle of Wight, 13.
 Fitz-Osbert, William, anecdote of, i. 44—rebellion and death, 46.
 Fitz-Peter, G., Earl of Essex, Chief Justiciar, an able and valiant Baron, i. 47—mode of living, 48—sudden death, character, 49—judicial decision by, 50.
 Five-Mile Act, passed in 1661, by which the Presbyterians were entirely expelled the House of Commons, ii. 197.
 Flanbard, R., Chief Justiciar, holds his Courts in Westminster Hall, i. 17.
 Flaxman, splendid monument by, to the memory of Lord Mansfield, iv. 12.
 Fleet, the most populous civil prison in England, ii. 278.
 Fleming, Sir Thomas, parentage, i. 272—made Solicitor-General, 274—failure in

- the House of Commons, 275—made Chief Baron by James I., 276—decision by, in the great case of Impositions, 276—Chief Justice of England, 279—gives judgment in the case of the Postnati, 279—death, 281—descendants, *ib.*
- Fleta, famous treatise, so called, written by a lawyer when a prisoner in the Fleet, during the reign of Edward I., *ib.* 279.
- Flower, Benjamin, imprisonment of, for a libel on Bishop of Llandaff, *ib.* 110.
- Floyde, Edward, impeachment of, and frightful sentence inflicted on, for words alleged to have been maliciously spoken i. 431; *ib.* 210—differences between the Houses of Parliament as to the right to punish, 10.
- Foley, Lord, generous friendship entertained by, towards Lord Mansfield, *ib.* 178, 246.
- Foreigners, jealousy of, in England, i. 52—banishment of those holding office, 53—petition of London merchants for the banishment of, *ib.* 273.
- Forest, charter of, a reasonable concession, to the nobility and the people improperly annulled, i. 58.
- Foresters and Regraters, prosecution of, scouted by Lord Holt, *ib.* 408—fury of Lord Kenyon against persons charged as, *ib.* 129.
- Forms in legal proceedings, important charges in, by Lord Mansfield, *ib.* 273—observance of, necessary for pure administration of justice, *ib.* 356.
- Fortescue, Sir John, Chief Justice of King's Bench, immortal treatise by, i. 165—pamphlets written by, 167—integrity and impartiality of, 169—terms of his pardon by Edward IV., 180.
- Foster, Sir Michael, Justice of the King's Bench, a judge of deep learning, *ib.* 266—opinion of, on the duties of a good citizen, *ib.* 171, *n.*—censures on the superstitious cruelty of Lord Hale, 220.
- Foster, Sir Robert, made a Judge of Common Pleas, by Charles I., *ib.* 135—reinstated by Charles II., 136—as Chief Justice of England, brings about the execution of Sir Harry Vane, 137—treatment of Quakers by, 139—death, 142.
- Foster, Sir Thomas, Judge of Common Pleas, under James I., *ib.* 143, *n.*
- Foss, Edward, barrister-at-law, extract from his work entitled 'Lives of the Judges of England,' i. 48.
- Fountain, Mr. Sergeant, intimacy of, with Sir Matthew Hale and Richard Baxter, *ib.* 221.
- Fox, Right Hon. C. J., epigram on the Receipt Tax introduced by, *ib.* 424—
- debates respecting the Libel Bill of 1743; *ib.* 86, 97, 138—speeches by, when Secretary of State, 62, 64—expense incurred by, in the Westminster Scrutiny, 71—censure by, on Lord Kenyon, when Master of the Rolls, 73—cause of the civility always shown by, to Lord Eldon, *ib.*—action by, against the High Bailiff of Westminster, 75—verdict obtained by, against Horne Tooke, 121—proposals by, on the trial of Warren Hastings, overruled by the Lords, 169—confidential note from, to Lord Ellenborough, in reference to political events, 256—becomes a member of the Broad-bottom Administration, 246—offer of the Great Seal by, to Lord Ellenborough, 247.
- Foxhunting, the diversion of, cannot be legally pursued against the consent of the occupiers of the land, *ib.* 225.
- France, characteristic differences between the people of England and of, in the management of local matters, i. 2—wars of the English with, 56, 105, 169, 185; *ib.* 237—war between Aragon and, i. 88.
- Franklin, Benjamin, insult to, by Wedderburn, one of the causes of the rupture between England and America, *ib.* 378.
- Fraser, Mr. Farquhar, complete collection of Lord Coke's works, admirably edited by, i. 398, *n.*
- Frederick, Prince of Wales, debate on the Regency Bill at the death of, *ib.* 84—character and disposition of, 234.
- French, the language of the higher orders in Scotland in the 12th century, i. 24, *n.*, 67, *n.*—use of, in law proceedings, forbidden by the Long Parliament, 398, *n.* resumed at the Restoration and continued until the reign of George II., *ib.* 51.
- Friend, Dr., volume of epitaphs by, *ib.* 215—verses on the work, by A. Pope, 215.
- Friend, Sir John, trial of, for treasonably conspiring against the life of William III., *ib.* 415—Lord Holt's exposition of the law on the trial of, defended, 414.
- Froissart's Chronicle, extracts from, i. 125—127.
- Frost, John, discreditable prosecution and conviction of, before Lord Kenyon, for alleged sedition, *ib.* 98.
- Fuller's Worthies, quotations respecting eminent judges from, i. 155, 164, 168, 169, 188, 200, 229, 250, 404.
- Fulthorpe, Sir William, a worthless puisne judge, sentences Scrope, Archbishop of York, and Mowbray, Duke of Norfolk, to be beheaded without form of trial, i. 147.

G.

- GAME-LAWS**, a judicial decision on the construction of, *iii.* 401.
- Gaming**, furious crusade against, by Lord Kenyon, *iv.* 119.
- Gaolers**, liability of, to be convicted of murder for negligent treatment of their prisoners, *iii.* 44, 46.
- Gardiner**, Sir Thomas, appointed Solicitor-General in 1645, not under the Great Seal, *ii.* 102.
- Garnet**, superior of the Jesuits, trial and execution of, for complicity in the Gunpowder Plot, *i.* 266, 312.
- Garrow**, Sir William, Attorney-General and Chief Justice of Chester, *iii.* 118, *n.* —personal appearance of, described, *iv.* 107—speeches of, at the bar, 124.
- Garrick**, David, the popularity of his acting, *iii.* 109, 111, 132—farces by, 136—portrait of, between Tragedy and Comedy, 290.
- Gascoigne**, Sir W., origin and education, *i.* 143—success at the bar, 143—appointed Chief Justice of the King's Bench, 145—refusal of, to try a prelate and a peer, 146—committal by, of the Prince of Wales considered and proved as an indisputable historical fact, 148, 157—merit of, in the transaction, 157—law reforms by, 158—acts as arbitrator in Lord Ross's case, 159—death and will, 160—estates, 161—epitaph, 162—descendants, *ib.*
- Gaselee**, Sir Stephen, Justice of the Common Pleas, an eminent special pleader, anecdote respecting him and Lord Ellenborough, *iv.* 289.
- Gaunt**, Elizabeth, memoir of, *ii.* 335, 345, 411.
- Gaunt**, John of, false accusation against, *i.* 116—leads an army from Nottingham to London, 119—a client of Chief Justice Gascoigne, 143—his treatment of Trevelian, Chief Justice, 127—death of, 144.
- Gawdy**, made Chief Justice of the Common Pleas by consent of Sir Edward Coke, the Attorney-General, *i.* 314.
- Geoffrey**, Bishop of Coutance, presides at the memorable trial on Penenden Heath, *i.* 7—result of his decision, 14.
- George I.**, state of the judicial bench on the accession of, *iii.* 18, 31—disputes between, and the Prince of Wales, 23—favour of, to Chief Justice Parker, 17—visits by, to Germany, 50—death of, at Osnaburgh, 43—verses of condolence respecting, 183—inability of, to pronounce English words, 183, *n.*
- George II.**, dispute between, and his father respecting the right to regulate

and control the education and marriages of his grandchildren, *iii.* 25—annoyance of, at the attack on his foreign policy in the Craftsman, 48—Lords Justices appointed by, on his visits to Germany, 50—legal proceedings directed to be carried on in the English language by a statute passed in the reign of, 51—Regency Bill introduced by sanction of, on the death of the Prince of Wales to make the Duke of Cumberland regent, 94, 235—dislike of, to the first Earl of Chatham, 123—death of, the prelude to a new distribution of parties, 126, 335—Hanoverian troops taken into British pay by, 218—personal regard and suspicions entertained by, towards Lord Mansfield, 220—opinions expressed by, as to the incompetence of Duke of Newcastle, 249—great progress of manufactures and commerce during the reign of, 274—extensive colonial possessions of, 275—all political men Whigs in the reign of, 323—mode of conducting affairs of the nation during the latter part of the reign of, 333—panegyric on the virtues of, by Lord Mansfield, *iv.* 19.

George III., accusation against Mr. Stone, sub-governor to, when Prince, *iii.* 237—colonies ceded to, by Peace of 1762, 283—change of parties on the accession of, 335—on resignation of Lord Chatham, Lord Bute appointed Minister to, 336—libellous and insulting Letter of Junius to, in 1769, 358—perverted state of the public mind during the reign of, 364, *n.*—manners of the House of Lords in early part of reign of, 380—anxiety of, for a vigorous prosecution of the war with America, 386—antipathy of, to Lord Chatham, 393—energy displayed by, in quelling the anti-Popery Riots in 1780, 414—general illuminations to celebrate the recovery of, from his illness in 1788, *iv.* 8—change of party politics during the reign of, 32—debate on necessity of a Regency owing to the insanity of, 84—rebuke by, to Lord Kenyon respecting his Latin quotations, 6, 92—mild remonstrance of, to Lord Kenyon on his loss of temper in Court, 94—attempt on the life of, by Hadfield, 167—eulogy on, by Lord Kenyon, 138—correspondence of, as to the Coronation Oath connected with Catholic Emancipation, 139—state of the roads and inns in the provinces during the reign of, 160—remark of, to Lord Ellenborough when made Attorney-General, 202—permanent insanity of, 274—interesting letter from Lord Eldon to Lord Ellenborough describing an interview with, 274.

- George IV., new system of Courts of Error for the review of the decisions of the Common Law Courts established in the reign of, i. 218, n.—application by, when Prince of Wales, for an account from the King of the revenues of the Duchy of Cornwall during his minority, iv. 204—letter of condolence from, when Regent, to Lord Ellenborough on his announced resignation from severe illness, 249.
- Gerrard, Sir Gilbert, Attorney-General to Queen Elizabeth, i. 253.
- Gibbon, Edward, masterly sketch of Roman Civil Law by, in his *Decline and Fall*, i. 325; iii. 264.
- Gibbs, Sir Vicary, intimacy of, with Lord Ellenborough at Cambridge, iv. 162—unprecedented number of *ex officio* informations filed by, when Attorney-General, 259—remark by, to Lord Campbell, in 1810, on the failure of the prosecution against Mr. Perry, 263—anecdotes of Mr. Justice Vaughan related by, 297, n.—Puisne Judge of the Common Pleas, Chief Baron of the Exchequer, and Chief Justice of the Common Pleas, 287, 353—singular cause of his premature decay, iii. 35.
- Giffard, Sir Robert, appointed Solicitor-General, iv. 353—character of, as a lawyer, by Lord Tenterden, 361—raised to the peerage, 378.
- Gilbert, Sir Jeffrey, a Baron of the Exchequer, Commissioner of the Great Seal, iii. 36—excellent law treatises by, 14, n.
- Glanville, R. de, parentage, a lawyer, statesman and soldier, i. 22—takes the King of Scotland prisoner, 24—a Justiciar, 27—his purity and impartiality as Chief Justiciar, *ib.*—his work on English Jurisprudence, 29—character of, by Lord Coke, 31—dignity of *Dapifer* conferred on, 35—takes the Cross, 38—dies at the siege of Acre, 40.
- Glanville, Serjeant, an accomplished lawyer and an intimate friend of Sir Matthew Hale, ii. 160.
- Glenbervie, Lord, Reports of Cases *tem-pore* Lord Mansfield by—punning motto adopted by, when raised to the peerage, iii. 277.
- Gloucester, Regal Ceremonies at, in A.D. 1087, i. 16.
- Gloucestershire, Sheriff of, murdered, i. 34—freeholders of, elect Sir M. Hale to Cromwell's second Parliament, ii. 179—to the Convention Parliament, 182—dialect of, 230.
- Glyn, John, Chief Justice of the Upper Bench, 1748, ii. 65—assists in abolishing public worship, 1754—his Self-denial Ordinance, 67—reconciled to Cromwell and appointed a Judge, 68—made Chief Justice of the Upper Bench, 74—points of law decided by, 71—resigns his office and assists in the restoration of the monarchy, 74—assists in drawing the impeachment against Lord Strafford, 92—death of, 75.
- Glyn, Serjeant, motion by, for inquiry into the conduct of the Judges, A.D. 1770, iii. 367.
- Godolphin, Lord, urgent request by, to Lord Holt, that he would accept the Great Seal, ii. 438—Prime Minister in 1710, iii. 15.
- Godric the pious Hermit, prophecy of, respecting the blindness of Bishop Pusey, i. 42.
- Godwin, Bishop, work by, De Præsalibus, i. 17.
- Goodman v. Harvey, doctrine laid down in, by Lord Tenterden, now exploded, iv. 376.
- Gordon, Lord George, violent speech of, in the House of Commons against concessions to the Roman Catholics, iii. 402—tumultuous procession headed by, through London, 404—riots resulting from the intemperate language of, 403, 403—counsel engaged for defence of, iv. 54—trial of, and acquittal on a charge of high treason, 58.
- Gowry Conspiracy, a real plot, iii. 161.
- Goree, settlement on the coast of Africa, discontent among English troops at, under Governor Wall, iv. 206.
- 'Governor, The,' an historical work, by Sir T. Elyot, i. 149, 228.
- Grafton, Duke of, libellous attacks on, in the well-known letters of Junius, iii. 357.
- Graham, Baron, occurrence on the Western Circuit, ii. 206, n.
- Green, Sir Henry, Chief Justice of King's Bench, an obscure person, i. 111.
- Gregory, Sir William, appointed a Justice of King's Bench in 1688, ii. 381.
- Grenada, Island of, ceded to Great Britain by the Peace of 1763, memorable decision of Lord Mansfield as to the illegality of a tax imposed on the merchants of, by the king without sanction of Parliament, iii. 283.
- Grenaway, Mr., murdered in Exeter Change by a Portuguese nobleman, ii. 60.
- Grenville, George, appointed Prime Minister, iii. 340—the system of taxing America introduced by, in 1767, 347.
- Grenville, Lord, Prime Minister of the Government of "All the Talents" in 1806, iv. 257—quibbling argument used by, in defending the incongruous position of the Chief Justice being a mem-

ber of the Cabinet, 251—letter from, to Lord Ellenborough on retiring from office, 257.
 Grenville, Sir John, bearer of the King's letter to the Parliament, ii. 188.
 Gray de Werke, Lord, trial of, for seduction, ii. 292.
 Grey, Earl of, speech in support of the Bill for removing the disabilities of the Roman Catholics, iv. 387.
 Greystoke, Sir Ralph, a Baron of the Exchequer, i. 162.
 Grimston, Sir H., Speaker of the House of Commons, welcomes Charles II., ii. 191.
 Grose, Sir Nash, appointed Justice of the King's Bench, February, 1777, iii. 266—personal appearance of, iv. 108—decision of, in *Haycraft v. Creasy*, 128—qualifications of, as a Judge, 108, 215—decision of, in *Priestly v. Hughes*, that the marriage of an illegitimate minor was valid, 222.
 Grosvenor, Lord v. Duke of Cumberland, direction of Lord Mansfield in celebrated cause of, iii. 299.
 Grotius, the codifier of international laws, iii. 186.
 Gunnersbury, seat of Chief Justice Richardson, ii. 21.
 Gurney, Mr., the famous stenographer, facetious remark by, ii. 22.

H.

HABEAS CORPUS Act, resolutions of the Commons in 1628 made the foundation of, i. 383—suspension of, in 1744, iii. 89, 223—in 1801, iv. 202—bill for the improvement of, rejected in the House of Lords through the opposition of Lord Mansfield, iii. 331.
 Hacker, Colonel, trial and execution of, for assisting at the beheading of Charles I., ii. 148.
 Hadfield, trial of, for firing at George III., iv. 107.
 Hague, memorable letter, written by Bolingbroke and published in the *Craftsman*, reflecting on George II., prosecution for printing, iii. 47, 431.
 Hair, a lock of, sonnets on, by Lord Tenterden, iv. 343.
 Hale, Sir Edward, his case for establishing the dispensing power, ii. 344—opposition of four Judges to it, 345—judgment of Chief Justice thereon, 345.
 Hale, Sir Matthew, panegyric by, on Rolle, Chief Justice, ii. 64—excuses himself from presiding at Penruddock's trial, 69—parentage of, 156—education, 157—fondness of, for stage plays, 158—studies and mode of life, 160—advice to grandchildren as to drinking healths at parties, 161—taken by a pressgang, 162—system of study at law and other sources of knowledge, 163—early celebrity of, 165—refusal to enter Parliament, 167—counsel for Laud, 168—takes the covenant and treats for the surrender of Oxford, 169—tries to bring about a settlement between the King and the Parliament, counsel for Charles I., 170—for Duke of Hamilton, Lord Craven, and other Royalists, 171—becomes a Judge under Cromwell, 175; iv. 86—Independent conduct as a Judge in criminal cases, ii. 177—elected to Cromwell's second Parliament for Gloucestershire, 179—attends Cromwell's House of Lords as one of the Judges, 182—declines to act under Richard, 183—M.P. for Oxford University and for Gloucestershire in 1660, 184—proposes that the restoration of the King shall be under conditions only, 74, 185—is presented to the King—opinion of, on the Thirty-nine Articles, 191—conduct of, respecting the regicides, 192—made Chief Baron, 195—admirable rules laid down by, for his conduct as a Judge, 198 made Chief Justice of England, 199—qualifications as a common law Judge, 200—as an equity Judge, 203—settles disputes after the Fire of London, 204—anecdotes of his judicial purity, 204—opinion of, on the validity of Quakers' marriages, 209—conduct towards John Bunyan, 210—superstitious cruelty to women accused of witchcraft, 214; iii. 6—censured by Sir M. Foster, ii. 220—intimacy with Baxter and Bishop Wilkins, 221—prepares a bill for "a comprehension," 222—failing health, 225—resignation, *ib.*—last interview with the King, 227—last illness, 231—various publications, 231, 235—funeral, 233—character, judicial writings, 234—religious views—dress, disregard of money, 241—family and descendants, 244.
 Halfhide v. Fenning, decision of Lord Kenyon in, justified, iv. 80.
 Hallam, Henry, censures of, in his 'Constitutional History of England,' on Sir Edward Coke, disapproved, i. 404.
 Halliday's Life of Lord Mansfield, a most indifferent specimen of biography, iii. 163.
 Hall's Chronicle, events narrated in, i. 151.
 Halsey, Colonel, tried and acquitted for levying war against Cromwell, ii. 77—friendly conduct of, to Chief Justice Newdigate, 79.
 Hamilton, Duke of, improper execution of, ii. 125, 171.
 Hampden, John, memorable case of, deci-

- sion of the Judges in, ii. 25—resistance by, made under the advice of Lord Coke, 394.
- Hankford, Sir William, Chief Justice of King's Bench—birthplace, 163—and ingenious suicide, 164—epitaph, *ib.*—supposed committal of Henry V. by, disproved, 155.
- Hanner, Job, reports of cases begun by Lord Kenyon, edited by, iv. 142.
- Hanoverian troops, employment of, by George II., debate in Parliament respecting, iii. 218.
- Harcourt, Lord, Lord Chancellor, limited accomplishments, of, iv. 14—See 'Lives of the Chancellors,' iv. 430.
- Hardwicke, Earl of, Chief Justice of King's Bench and Chancellor, iii. 53, 54, *n.*—life of, by Harris, 75—stanzas made on, 431.—See 'Lives of the Chancellors,' v. 1.
- Harewood Church, burial place of Sir W. Gascoigne, the celebrated Chief Justice, i. 161.
- Hargrave, Mr., law tracts by, ii. 236—learning and dilatoriness of, iv. 51.
- Harrison, Rev. Thomas, fined for contempt of court, ii. 26—damages awarded against, 27.
- Harrowby, Lord, title selected by Chief Justice Ryder, iii. 104—letter to Mr. Ryder respecting the peerage of, from Mr. Yorke, 106—dignity of, conferred in 1776, 107—Earl of, a statesman and orator, in the reign of George III. and George IV., 114.
- Harvey, Mistress of Lord Chancellor Thurlow, a heroine in the 'Rolliad,' iv. 163.
- Hasted's History of Kent, quotation from, i. 63, 134.
- Hastings, Warren, memorable trial of, debate whether the impeachment had abated by the dissolution of Parliament, iv. 85—counsel retained in, 165—incidents during trial, 169–189—decision of the House of Lords that the rules of law respecting admissibility of evidence should guide them, 173—conclusion of, at the termination of 145 days, 189.
- Hat, worn by President Bradshaw, preserved at Oxford, ii. 123.
- Hatton, Lady, parentage and widowhood of, i. 299—second marriage, 301— betrothal of her daughter without the knowledge of, 348—her resentment and revenge, 349—prosecuted and imprisoned for concealing her child, 352—restored to liberty and favour at Court, 355—conduct of, in the Civil Wars, 406.
- Hatton, Sir Christopher, a Commissioner for State trials, i. 243, 245—his conduct respecting the Earl of Northumber-
- land's death, 254, 255, *n.*—See 'Lives of the Chancellors,' ii. 136.
- Hawks, high price of, in the twelfth century, i. 48.
- Haycraft v. Creasy, decision in, overruled, iv. 127, 132.
- Hayward, Sir J., his account of Richard II.'s deposition, i. 137, *n.*
- Heale, Sergeant, speech of, upon the rights of the Crown in the House of Commons, 1601, i. 411.
- Healths, jovial custom of drinking in the seventeenth century censured by Sir M. Hale, ii. 161.
- Heard, Sir Isaac, conversation of, with an eye-witness of the execution of Charles I., iii. 159, *n.*
- Hearn, Thomas, collection of curious discourses by, i. 433.
- Heath, Mr. Justice, sudden death of, iv. 348—refusal of, to be knighted, *ib.* *n.*
- Heath, Sir Robert, parentage and education, ii. 34—made Solicitor-General, 36—conducts the prosecution against Eliot and others, 38—argument of, against Parliamentary privilege, 40—schemes for raising supplies suggested by, *ib.*—made Chief Justice of the Common Pleas, 41—dismissed for bribery, and returns to the bar, 42—made Chief Justice of England, 44—removed by the Parliament, 46—exile and death, 47.
- Hebriides, the, Boswell's account of Dr. Johnson's tour in, iv. 29, *n.*
- Hemington Church, burial-place of Chief Justice Montague, i. 210.
- Henderland, Lord, opinion of, in favour of public schools, iv. 4.
- Hengham, Ralph de, Chief Justice of the King's Bench, i. 85—law books composed by, 86—guardian of the kingdom, 88—charged with bribery and fined, 89—made Chief Justice of Common Pleas, 91—character, 91.
- Henley, Sir Robert, Attorney-General, made Lord Keeper by the mismanagement of Chief Justice Willea, iii. 125—created an Earl, 126.—See Northington.
- Henry I., restoration of Saxon institutions by, i. 18.
- Henry II., Chief Justiciar more than a year, i. 20—hard pressed in his continental dominions by Louis VII., 23—war against, by William the Lion, king of Scotland, *ib.*—pilgrimage of, to the shrine of Becket, 25—imprisons his queen in the Castle of Winchester, 27—renowned for his love of justice, 29—compendium of the laws drawn up by Glanville at the command of, 33—submission of the Welsh to, 35—dispute of with the monks of Canterbury, *ib.*—death of, 38.

- Henry III., ravages of the Welsh about Montgomery in the reign of, i. 58, n.—expedition by, against the Welsh, 65—compelled to swear obedience to the Provisions of Oxford, 68—obtains from the Pope a dispensation from his oath, *ib.*—statute of Maribridge passed in reign of, 75.
- Henry IV. banished by Richard II., i. 143—proclaimed king, 145—Gascoigne appointed Chief Justice of King's Bench by, *ib.*—prudence of, 171.
- Henry V., irregularities of, i. 148—committed to prison by Chief Justice Gascoigne, 149—157—succeeds as king, 155—161—reappoints the Chief Justice and other Judges selected by his father, 142, 163—warlike proceedings of, 165—gallantry of, 171.
- Henry VI. a prisoner in the Tower, i. 167—dethroned, 169—restored to power, *ib.*—piety of, 171—after ten years' captivity replaced on throne, 178—murdered after the fatal battle at Barnet, 179—rack in the Tower introduced in the reign of, 297.
- Henry VII., deep dislike of, to the Yorkists, i. 185—stern and wary conduct of, 189.
- Henry VIII., gay and licentious disposition of, i. 189—makes himself Pope in England, 194—prosecutions for misprision of treason directed by, against Fisher, Bishop of Rochester, 195—and Sir Thomas More, 197—tyrannical proceedings of, against his wives, 204.
- Hensey, Dr., trial and conviction of, for treason, iii. 332.
- Herald, Morning, action against, for a libel on Mr. Pitt, falsely accusing him of gambling in the funds, iii. 436.
- Herbert, Sir Edward, Chief Justice of King's Bench on promotion of Jeffreys, ii. 338—parentage, *ib.*—Attorney-General for Ireland, 340—Chief Justice of Chester, 341—of England, *ib.*—opinion of, on the trial of Lord Delamere, 342—judgment on the dispensing power, 344—popularity of, with the King, 349—offends the King by refusing to enforce martial law during peace, 350—dismissed, 353—following James into exile, is excepted from the Act of Indemnity, 355—private worth—family, *ib.*
- Herbert, Sir Edward, an old cavalier, father of the Chief Justice, holds the Great Seal when in exile with Charles II., ii. 348, 355.
- Hewitt, Sir James, appointed a Judge of the Court of King's Bench, November, 1766, afterwards Lord Chancellor of Ireland, with a peerage, iii. 266.
- Hereford Assizes, important quo warranto case tried at, iv. 341.
- Herne, leading counsel for Laud, able argument of, ii. 168.
- Hill, Serjeant, a deep black-letter lawyer, anecdotes respecting, iv. 24, 25.
- History, ancient and modern, letters on, by Lord Mansfield, iii. 195.
- Histrionastix, a publication against stage plays and other similar amusements, ii. 17.
- Hobart, Sir Henry, Attorney-General, made Chief Justice of the Common Pleas, i. 325.
- Hodgson v. Scarlett, memorable action of defamation tried before Lord Ellenborough, iv. 231.
- Hody, Sir John, his alleged committal of Henry V. refuted, i. 155—salary as Judge increased, 163, n.
- Holborne, argues the question of ship-money for four days, ii. 88, n.—opposes the Bill of Attainder against Lord Straford, 95.
- Holland, Earl of, executed in 1649 by a casting vote of the House of Commons, ii. 126.
- Holland, Lord, his excellent imitations of Lord Thurlow, iv. 37, n.—motion by, respecting the conduct of Government prosecutions, 265.
- Hollingshed's Chronicles, i. 130.
- Holloway, Sir Richard, Justice of King's Bench, gives his opinion in favour of the Bishops, ii. 373—dismissed from his place, 375—examined at the bar of the House of Commons in support of the Indemnity Act, 378.
- Holroyd, Sir George, appointed a Judge of the King's Bench, character and ability of, as a Judge, iv. 215, 296, 361, 366.
- Holt, Sir John, birth-place, ii. 392—education and early excesses, 384—studies law at Gray's Inn, 386—rides the Oxford circuit, 388—counsel for Lord Danby, 389—for Lord Russell, 391—argument in *Lord Macclesfield v. Starkey*, 393—made Recorder of London, 394—refuses to aid the arbitrary measures of the King, 351, 395—is dismissed from his Recordership, acts as assessor to the Peers in the Convention Parliament, 395—enters Parliament, 397—manager for the Commons at the "Abdication" conference, *ib.*—appointed Chief Justice of the King's Bench in 1688, 400—merits as a Judge, 383, 402—his reporters, 404—celebrated judgment by, in *Coggs v. Bernard*, 405—decides that a slave is free on coming into England, 406—decisions of, in various cases, 407—the weight of his opinion with Judges and the public, 409—conduct of, when presiding at State trials, 411—his decision in *Sir John Friend's* case considered and justified, 415—summoned before a Committee of

- Privileges, 420—judgment in the Bankers' case, 423—refuses to be Chancellor, 425—a Lord Commissioner of the Great Seal, *ib.*—his decision in the case of *Ashby v. White*, 428, 433—his opinion for discharging the Aylsbury men, 434—fabulous story respecting his threat to commit the Speaker of the House of Commons, 437—refuses the Great Seal a second time, 438—his public funeral, *ib.* 2—magnificent monument, 3—his want of knowledge in literary and scientific matters, 4—effects the repeal of statutes for punishing witchcraft, 5—detects a false prophet, 8—ill-sorted marriage and representatives, 13.
- Holt, Sir Thomas, father of the Chief Justice, a serjeant-at-law, one of the founders of the Tory party, taken into custody by order of the House of Commons, his death, *ib.* 3-33.
- Home, John, verses by, on the first taxation of claret in Scotland, *iv.* 29.
- Hone, William, prosecution of, for the publication of profane libels, *iv.* 284.
- Hood, Lord, election of, for Westminster in 1784, *iv.* 71.
- Horne Tooker, John, insolent conduct of, towards Lord Kenyon, *iv.* 121-124—debate respecting right of, to sit in the House of Commons, 264.
- Hottentot Venus, case of the, argued in the King's Bench, *iv.* 222.
- Hough, Bishop, spirited opposition of, to the introduction of popery into Magdalen College, Oxford, *ii.* 364; *iii.* 137.
- House of Commons. See Parliament.
- Hoveden's Chronicle, extracts from, *i.* 20, 21, 27, 39.
- Howard, Catherine, Queen, reasons which occasioned the unjust execution of, *i.* 205.
- Howard, Sir William, Justice of Common Pleas, an able and upright magistrate, *i.* 99—descendants, 106.
- Howard v. Bingham, famous case of crim. con. tried before Lord Kenyon, *iv.* 118.
- Howarth, Mr., K.C., melancholy death of, *iv.* 145.
- Hubert, W. Archbishop, Chief Justiciar, *i.* 44—judgments, severity, deposed, 47. See 'Lives of the Chancellors,' *i.* c. vi.
- Hudibras, verses in, on the disgraceful conduct of Maynard and Glynn at the trial of Colonel Penruddock, *ii.* 69.
- Hume's History of England, defects and errors in, *i.* 324, 376, 400—quotations from, 93, 157, 177; *ii.* 18.
- Huncoke, in Lincolnshire, grand assize held at, in the reign of Henry I., *i.* 19.
- Hunt, Henry, facetious remark to, by Lord Ellenborough, *iv.* 300.
- Hunt, Leigh, prosecution of, for libel, *iv.* 264.
- Hunter, Mr., Judges and other eminent men educated by, at Lichfield School, *iii.* 131.
- Hurd, Bishop, character of Lord Mansfield by, *iv.* 35.
- Hussey, Sir John, parentage, *i.* 182—made Chief Justice of King's Bench, 183—submits to Richard III., 184—continued by Henry VII., 185—his judgments on the attainder questions, and death, 186.
- Hutton, Mr. Justice, declares against the legality of ship-money, *ii.* 25—attack upon, for this judgment, 26—popularity of, 27—trial of Harrison for an insult to, in open court, 43.
- Hyde, Sir Nicholas, Chief Justice of King's Bench, *ii.* 1—his judgment in *Sir T. Darnley's* case, 2—his opinions on the privileges of the House of Commons, 6—his early death, 8—his character by contemporaries, *ib.*—reply in the House of Lords touching the liberation of parties committed by King and Council, 7.
- Hyde, Sir Robert, made a Judge of Common Pleas at the Restoration, *ii.* 143—made Chief Justice of the King's Bench, 144—hangs a printer for publishing a libel, 146—sudden death of, 147.

I.

- IMPET, Sir Elijah, debate respecting, in the House of Commons, *iv.* 77.
- Impositions, unconstitutional decision of Chief Baron Fleming in the great case of, *i.* 276—improper proceedings of the King by means of, 277.
- Indemnity, Act of, debate in the House of Commons on, *ii.* 355, 378.
- India, angry debates respecting bill introduced by Mr. Fox to regulate affairs in, *iii.* 425.
- Inns of Court, established as schools of Common or Municipal Law, *i.* 85—"moots" and bolts at, 189—rules of, respecting admission to the bar, 267, 180, *ii.*—lectures at, 288—processions from, to Westminster, 315, 416—amusements in, 421—jurisdiction of, *iii.* 299—examination at, recommended, *iv.* 45.
- Insanity, when an exemption from criminal responsibility, *iv.* 109—libellous to falsely assert that the sovereign, or any other person, is afflicted with, 367.
- Institutes of Lord Coke, analysis of, *i.* 401.
- Insurance, maritime, law of, settled by Lord Mansfield, *iii.* 278.
- Investigation respecting the conduct of the Princess of Wales, *iv.* 267.
- Intolerance on religious subjects often accompanied with immorality and infidelity, *iv.* 30.

Ireland, the want of self-reliance manifested by the Celtic inhabitants of, i. 2—considered a penal colony by the English, 132, 375, 426—society in, described, iii. 82—laws of England received in, by command of various Kings, 285—coercive measures for, passed, iv. 203.

Ireland, Duke of, Pontefract Castle fortified by, i. 115—impeached for treason, 120—flight of, 121.

Irish Porter's, memorable ballad, so called, on Sir Dudley Ryder's ex-officio information against William Owen, iii. 102.

Ivyn, Sir John, Chief Justice of King's Bench, i. 165.

J.

JACKSON, Randle, counsel to East India Company, anecdotes relating to, iv. 299.

Jamaica conquered from Spain by Cromwell, abandoned by its inhabitants and re-peopled by English emigrants, iii. 283.

Jacobitism at Oxford in 1753 described, iii. 243.

JAMES I., accession of, i. 262, 276—import duties illegally exacted by, 276—approval by, of Fleming as a Judge, 278—attends at the trial of Garnet, 312—attempt by, to rule England as an absolute King, 318—amusing anecdote of his attempt to act as Judge, 321—Bacon made Attorney-General by, 326—benevolence demanded by, 327—tyrannical conduct of, to Peacham, 328—anxiety of, to screen the murderers of Sir T. Overbury, 329—claim of, to sit and try causes resisted by Sir Edward Coke, 319—anger of, towards the Judges in the matter of the Commendams, 333—salaries of Judges in the reign of, 337—dismissal of Lord Coke by, 343—interference of, in promoting the marriage of Sir John Villiers and Lady Fanny Coke, 353—character of, by Mr. D'Israeli, 344, 373—attempt by, to alter the law of England by proclamations, 322—remonstrance of the Judges to, against the attempt, 324—title of King of Great Britain improperly assumed by, 417—Williams appointed Lord Keeper by, 366—Parliament adjourned by, after the conviction of Lord Bacon and Sir Giles Mompesson, 367—forbids the House of Commons to discuss matters of State, and denies their privileges, 370—frantic conduct on hearing of the protestation, 372—Lord Coke committed to the Tower by order of, 373—statute passed by, to abolish monopolies, and authorizing the Crown to grant patents for securing in-

ventions, 376—delight of, at his pedigree from Cerdic the Saxon and William the Conqueror being set forth by the Speaker of the House of Commons in his address in 1614, 437—death of, 377.

JAMES II., proceedings against, in 1680, as a Popish recusant, stopped by Chief Justice Scroggs, ii. 268—prosecution of the seven Bishops by, 302, 366—proceedings of, to bring in Popery, 336, 349—early patronage of Judge Jeffreys by, 337—conduct of, justified by Mr. Clark, 340, n.—attempt by, to establish the dispensing power, 344—honest Judges arbitrarily deposed by, 346, 347, 363, 362, 426—attempt by, to enforce martial law in a time of peace, 351, 395—residence at St. Germain's, 354—conversation of, with Jeffreys about the fitness of Sir Robert Wright to be a Judge, 359—attempt by, to introduce Popery at Oxford, 363—Declaration of Indulgence ordered to be read by, 365—foolish selection by, of Allybone as a Judge, 373—infamous selection by, of Judges, 346, 362, 375, 380—attempt by, to seduce Lord Holt, 394.

Jardine, David, Criminal Trials edited by, i. 309.

JEFFREYS, Judge, counsel against William, Lord Russell, ii. 298—opinion respecting him by Charles II., 332—made Chief Justice of King's Bench, in 1683, to secure the conviction of Sydney, 333—vicious and intemperate habits of, th.—hypocrisy and duplicity, 334—appointed Chancellor, 337—See 'Lives of the Chancellors,' iii. 495.

JEKYLL, Sir Joseph, M.R., a Commissioner of the Great Seal, iii. 36.

JEKYLL, Joseph, Master in Chancery, wit and anecdotes of, iv. 76, n. 143.

JENKINS, Captain, account by, of the cruelties of the Spaniards to English prisoners, iii. 207.

JENKINS, Judge, punishment of, for setting the Parliamentary Commissioners at defiance, ii. 104.

JENKINS, Sir Leoline, character of, iv. 40, 134.

JENNER, Sir T., Baron of the Exchequer, made Recorder of London by the King, ii. 394—an incompetent Judge, 363—visitor for the introduction of Popery into Magdalen College, Oxford, 363—dismissed from office in 1688, 381.

JERMYN, one of six Judges who sent in their adhesion to Cromwell after the execution of the King, ii. 108.

JEWS, massacre of the, i. 39—extortions of, 92, n.—banished from England by Edward I., ii. 276.

JOHNSON, Dr., pamphlet by, on the American revolt, iii. 379—his opinion in favour

of public schools, iv. 4, n.—severe discipline at school, approved by, iii. 132, n.—his character of Lord Mansfield, iv. 18, 26, 27—dislike of, to Scotland, iii. 164.

Jones, Sir Thomas, made Chief Justice of the Common Pleas in 1683, ii. 300—reports by, 301—opinion of, given against the King's dispensing power, 345.

Jones, Sir William, Senior Puisne Judge of the King's Bench in 1635, ii. 24.

Jones, Sir William, Judge in India, masterly essay by, on the Law of Bailments, ii. 406—pamphlet on the principles of Representative Government, written by, iv. 67.

Jonson, Ben, *Masque of Beauty*, by, i. 299, n.

Judges, English, salaries of, i. 78, 85, 93, 100, 109, 129, 133, 337—opinion of, on the privileges of Parliament in 1387, 116—extra-judicial opinions given to the Crown by, 131—convicted, fined, and banished, for taking bribes, 89—arbitrations by, discontinued, 159—formerly always rode the same circuit, 225; ii. 8, 19—merits and services of the Republican, 48, 60, 76, 134—introduced into Scotland, 111—costume of, in the 17th century, 123—in the 19th century, iv. 145—difficulty of finding eligible men to act as, at the Restoration, ii. 134—appointed for life at the Restoration, for a short period, 144—Lord Clarendon's admonition that courage is an indispensable quality for, 144—admirable rules for the conduct of, laid down by Hale, Chief Justice, 198—duty of, not to interrupt counsel, or to be loquacious on the bench, 199—duties of, not to manifest revengeful feelings on account of interruption, 202—seniority of, 247—rule as to their attendance at levees, 254—opposition of, to the King's dispensing power, 345—liable to impeachment for partiality in trying causes, 368—list of, before and after the Revolution, 381—errors frequently found in newly appointed, 401—appointment of, during good behaviour, vetoed by William III., 426—a competent Judge defined, iii. 4, 127, n., 369—to be qualified for due discharge of duties, must be downright tradesmen, 4—of King's Bench acting as police magistrates, 11, n.—men of eminence appointed, in the time of Lord Mansfield, 266—duties of, 268—ought not to hold political offices, 328—motion by Glynn in 1770, to inquire into the conduct of, 367—opinion of, solicited by the House of Lords, iv. 87—incorruptibility common to, 214—residences of, 307—travelling expenses of, 403, n.—extreme irregularity of, in their con-

ferences, 403—permitted to sit in the House of Commons during the Commonwealth, i. 239, n.

Judicial Institutions firmly established by Edward I., i. 83.

Junius, charges of, against Lord Mansfield, iii. 301, 312—letter of, to the King, 358—to Lord Mansfield, 364, 374—silenced, 376—authorship of, denied by Lord Sackville, 439.

Jury, trial by, its introduction into Scotland, iv. 4.

Justices of the Peace first created by Edward III., i. 106.

Justice in Masquerade, a metrical broadside on the butcheries of Scroggs, ii. 251.

Justice Vindicated, a book by Roger Coke, curious anecdotes in, i. 407.

Justiciar, Chief, origin and functions of the office, i. 1—power of, reduced, 4.

Justinian, *Pandects*, of lectures on, formerly given at Oxford, iii. 185.

K.

KEBLE's Reports, ii. 145—opinion of Lord Mansfield respecting, iii. 304.

Kellway, a reporter in the 16th century, i. 398.

Kelynge, Sir John, conduct of, as counsel, ii. 147—made a Judge of King's Bench, 150—Chief Justice, 161—his improper conduct as a Judge, 153—proceedings against him in Parliament, 154—death, 155, 200—his interference on behalf of women accused of witchcraft, 217—forced construction of the law of treason by, on the trial of the apprentices, 152—manuscript cases collected by, edited by Lord Holt, iii. 14.

Kent, History of, by Hasted, i. 134.

Kenwood, seat of Lord Mansfield, grand display of fireworks at, in celebration of the King's recovery, iv. 8—*fête champêtre* given to the fashionable world at, by the great-grand nephew of Lord Mansfield, 2.

Kenyon, Lord, parentage of, iv. 40—defective education of, 41—articled to an attorney, 42—admitted at the Middle Temple, 45—exclusive attention to legal studies, 46—writes reports of cases, 47—intimacy with Dunning, *ib.*—call to the bar, 48—sags for Dunning, 49—and for Thurlow, 51—appointed Chief Justice of Chester, *ib.*—enters Parliament, 53—counsel for Lord G. Gordon, 55—miserable speech made by, 56—appointed Attorney-General under Lord Rockingham, 59—altercation with Sir James Mansfield in the House of Commons, 60—zeal of, against public

accountants, 61—resigns office, 64—re-appointed by Mr. Pitt, 66—made Master of the Rolls, 70—advice of, respecting the Westminster Scrutiny, 71—created a Baronet, 74—abused in the Rolliad, 75—conduct of, as an Equity Judge, considered, 80—appointed to succeed Lord Mansfield in the King's Bench, and created a Peer, 82; iii. 440, 441—speech by, on the insanity of George III., iv. 84—on the impeachment of Warren Hastings, 85—opposes the Libel Bill of Mr. Fox, 86—answer of, to Lord Stanhope, 88—judicial character of, 91—temper, demeanour of, 92—congratulated ironically by George III., 94—legal decisions by, 95—behaviour of, on the trial of Stockdale, 96—severe sentences imposed by, in prosecutions for alleged sedition, 98—perversion by, of the clause in the Libel Bill, enabling the Judge to give his opinion to the jury on matter of law, 100—violent address to Juries by, on several State trials, 101—105—first seen by Lord Campbell, 107—altercation with Mr. Clifford, 110—true constitutional doctrine respecting privilege of Parliament laid down by, and since affirmed by statute, 112—decision of, on trial of Lord Abingdon, 114—doctrine of consequential damage checked by, 115—laudable zeal of, against manufacturers of slander, 116—misled by his love for morality in trials for adultery, 118—indignation of, at being termed “a legal monk,” 120—unfortunate encounter with Horne Tooke, 121—erroneous decisions of, 126—fury of, against forestallers and regraters, 129—last illness, and death of, 133—touching praise of, by his son, 134—popularity of, with juries, 135—abuse of attorneys by, 136—his efforts for the suppression of pettifogging, 137—kindness of, to students, 138—eulogy of, on George III., 138—opinion given to the King respecting Catholic Emancipation, 139—in favour of a severe code, though not a hanging judge, 140—facetie, penurious mode of life of, 143—dress, residences, will, descendants, 145—147—cause of his antipathy to Lord Mansfield, iii. 264.

King's Bench Court, ambulatory, i. 3, n.—its origin, 84—trial at bar respecting the appointment of chief clerk of, iii. 12.

Kingscote, of Kingscote in Gloucestershire, guardian of his kinsman Sir Matthew Hale, ii. 157.

Kingston, Duchess of, her trial for bigamy in Westminster Hall, iii. 384.

Kinloch, Alexander and Charles, trial of, for taking part in the Rebellion of 1745, iii. 67.

Knighthood, attempt to make it compulsory on landowners, ii. 40—abolished by the Long Parliament, 41, n.

Knightley, Sir Richard, prosecuted and fined for publishing a pamphlet on a better observance of the Sabbath, i. 257.

Knyvet, Sir John, Chief Justice of King's Bench and Chancellor, i. 111.—See ‘Lives of the Chancellors,’ i. 264.

Kyd, Stewart, blasphemous conduct of, iv. 121.

L.

Lacy, a fanatic, pretending to be a prophet, committal and punishment of, by Lord Holt, iii. 8.

Lane, Chief Baron of Exchequer, made Lord Keeper, ii. 105—counsel for Lord Strafford, 167.—See ‘Lives of the Chancellors,’ ii. 608.

Lanfranc, an Italian, archbishop of Canterbury, memorable trial of, on Penenden Heath, with Odo, respecting large estates in Kent, i. 7.

Lateran Council in 1179, the English Bishops represented at i. 42.

Latitat, Writ of, a contrivance invented to remove causes into the Court of King's Bench from the Common Pleas, i. 417, n.; iv. 216.

Lauderdale, Lord, anecdote related by, of Lord Ellenborough, iv. 295.

Laugher v. Pointer, division of opinion among the Judges in, iv. 70.

Law, Bishop of Carlisle, memoir of, iv. 149.

Law, Right Hon. C. E., M.P., letter from, to Mr. Smith, iv. 291—death of, 307.

Lawless, Mr., ruinous proceedings against, adopted by Lord Kenyon, iv. 136.

Lawrence, Sir Soulden, Justice of the King's Bench, great acuteness and discrimination denoted by the smile of, iv. 108—decision of, respecting the publication of Parliamentary proceedings, 113—judgment of, in Hayercraft v. Creasy, 128—college friend of Lord Ellenborough and Sir V. Gibbs, 152—great ability of, as a lawyer, 215—exchanges from the Court of King's Bench to the Common Pleas, in 1808, owing to a quarrel with Lord Ellenborough, 341.

Laws and Customs of England, celebrated treatise on, by Glanville, i. 29.

Lawyers' feasts, celebrity of, in early time, i. 202, 229.

Lawyers, costume of, in the 17th century, ii. 241—envious disposition of, towards members of their own profession celebrated for elegant accomplishments, iv. 17.

- L**ayer, Christopher, trial of, for high treason, iii. 23—harsh treatment of, by Chief Justice Pratt in refusing to allow the chains to be removed from his person during the trial, 23.
- Le Blanc**, Sir Simon, Justice of the King's Bench, an eminent Judge of foolish aspect, iv. 108—judgment of, in *Haycraft v. Creasy*, overruling the decision of Lord Kenyon, 128—presides, in the absence of the Chief Justice, at the Nisi Prius sittings of 1801, 133—a college friend of Ellenborough and Gibbs, 162—ability of, 215—decision of, in *Rex v. Creevy*, 229.
- Lechmere**, Lord, made Chancellor of Duchy of Lancaster, iii. 33.
- Lee**, John, Solicitor-General to the Coalition Ministry, refuses to prosecute the Dean of St. Asaph for publishing a libel, iv. 68—a leader on the Northern Circuit, 160.
- Lee**, Sir George, Dean of Arches, and Judge of the Prerogative Court, iii. 55—an excellent debater in Parliament, 59.
- Lee**, Sir William, parentage, iii., 55—passion of, for special pleading, 57—victory in the *Ivinghoe* case, 58—made a Judge of King's Bench, 59—Chief Justice of England, 61—decision on the rights of women, 62—conduct on the trials of the Rebel Lords, 64—death, 73—diaries and manuscripts, 73-75—family, eulogized on, by Sir James Burrow, 76.
- Legacies**, decision by Lord Kenyon that actions at law cannot be maintained to recover, iv. 95.
- "Legal Estate,"** judicial decisions on the rights of the, iv. 94.
- Leicester**, R., Earl of, Chief Justiciar, i. 21—fines and imprisons Archbishop A'Becket, 22.
- Lens**, Serjeant, legal qualifications of, iv. 286—recommended by Lord Ellenborough as his successor, 353.
- Levinz**, Sir Cresswell, Justice of the Common Pleas, displaced as a Judge, by James II., for his independence, acts as a counsel for the Bishops, ii. 302.
- Lewes**, memorable victory obtained by the Barons at, in 1263, i. 69—Chief Justice De Brus taken prisoner at, 79.
- Ley**, Sir James, parentage and education, i. 425—Chief Justice of Ireland, 428—made Chief Justice of England, 428—Speaker of House of Lords, 429—Lord High Treasurer, with a Peerage, 431—his descendants, 433.
- Libel**, rights of Juries in cases of, iii. 430.
- Libel**, law of, progress of opinion respecting, iii. 434—decision of the Judges on, iv. 86, 97, 105—persons out of England amenable for publishing a libel in England, 219.
- Libel**, Act of Lord Campbell, 6 & 7 Vic. c. 96, permitting the truth to be given in evidence, and referring to the Jury the question whether the defendant was actuated by malice or by a desire for the good of the community, iii. 435; iv. 87.
- Lichfield School**, Judges and other eminent men educated at, by Mr. Hunter, iii. 131, 164.
- Lilburne**, John, cruel sentence passed on, by the Star Chamber, in 1638, ii. 120.
- Lingard**, Dr. History of England, facts quoted from, i. 57, 92, 241; ii. 258.
- Literary Property**, statutory enactments for the protection of, iii. 300.
- Literary criticism**, freedom of, maintained, iv. 230.
- Literature**, alleged contempt for, by eminent lawyers, i. 395; iii. 4, 129; iv. 409.
- Littledale**, Mr. Justice, eminent qualities of, as a Judge, iv. 355.
- Littleton**, Sir Thomas, his remark against Wright, Chief Justice, in the debate on Indemnity Act, ii. 378.
- Littleton**, Commentary on, by Lord Coke, said to contain the whole Common Law of England, i. 394.
- Llandaff (Watson)**, Bishop of, imprisonment of Benjamin Flower for a libel on, iv. 110.
- Llewellyn**, Prince of Wales, invasion of England by, i. 58, &c.
- Lloyd**, harsh conviction of, for publishing a pasquinade on imprisonment for debt, iv. 96.
- Lollards**, persecution of the people called, i. 379.
- London**, city of, Quo Warranto case to vitiate charter of, ii. 321-325.
- Longchamp**, William, Chief Justiciar and Chancellor, i. 43—See 'Lives of the Chancellors,' i. 106.
- Lords**, House of, on the jurisdiction of, by Sir M. Hale, ii. 237—manners of, in 1775, iii. 380—scene in, on death of Lord Chatham, 390—at No Popery Riots, 405.
- Lovat**, Lord, impeachment of, iii. 98—trial and conviction, 226.
- Love**, Christopher, trial and execution of, under Cromwell, ii. 170, 172.
- Luci**, R. de, Chief Justiciar, i. 20—the Constitutions of Clarendon secured by the noble exertions of, 21.
- Lunardi's voyages** in his balloon, effect produced by, in Scotland, iv. 321.
- Lutwyche**, Sir Edward, Justice of the Common Pleas, very incompetent as a Judge, ii. 363—removed at the Revolution, 381.

Lyndhurst, Lord, continued a Serjeant after his appointment as Solicitor-General, i. 261, n.—Attorney-General and Chief Justice of Chester, iii. 112.—luminous energy of, as counsel for Dr. James Watson, iv. 281.—subsequent promotion, 281.—character and legal qualifications of, sketched by Lord Tenterden, 360.—appointed Lord Chancellor, with a Peerage, 379.

Lyster, Sir Richard, appointed Chief Justice of King's Bench, by Henry VIII. in 1546, i. 206, 211.

Lyttelton, Lord, History of the Reign of Henry, II. by, i. 36, 40.

M.

MACAULAY, Right Hon. T. B., remarks by, on the trial of Lord Grey de Werke, ii. 293.—on the character of the Judges selected by James II., 333, 345.—description by, of Littlecote Manor-house, i. 288.

MACCLESFIELD, Lord, appointed Chief Justice of England against the wishes of Queen Anne, iii. 15.—made Lord Chancellor by George I., 17.—an unpolished yet forcible parliamentary speaker, iv. 14.—thoughts as to the profession of attorneys, 42.—See 'Lives of the Chancellors,' iv. 501.

MACDONALD, Chief Baron of the Exchequer, facetious anecdote of, ii. 182.

MACGROWTHER, Alexander, trial of, for treason, iii. 66.

MACKINTOSH, Sir James, remarks on a speech of Lord Holland in 1811 by, iv. 267.

MACMANUS v. Cricket, doctrine established in, repudiated in the French Law Courts, iv. 296.

MADDAN, Rev. M., epigram by, on Lord Mansfield, iii. 438.

MADDox, History of Exchequer by, quotations from, i. 3, 22, 26, 33, 47, 91, 103.

Magna Charta, Commentary on, by Lord Coke, i. 401.—Cromwell's avowed contempt for, ii. 63.—allusion to, by Ke-lynge, Chief Justice, 182.

MAHON, Lord, remarks by, in History of England, on the prosecution of William Owen, iii. 103, n.—on the exile of Lord Bolingbroke, 120.—on the supposed confounding by Lord Mansfield of legal and equitable Jurisdiction, 316.

MALCOLM, King of Scotland, homage by, to William Rufus, i. 16.

MALLET, Mr. Justice, amusing decision of, that Charles the First was not executed in his own reign, but in that of his son, ii. 143, n.

MALMESBURY, William of, History by, i. 17.

MAN, Isle of, debate upon the claim to compensation by the Athol family for rights in, iv. 235.

MANKIND, on the Origin of, a treatise by Sir M. Hale, ii. 231, 238.

MANCHESTER, Edward, Earl of, a distinguished senator and soldier during the Civil Wars, contributes much to the restoration of the Monarchy, i. 424.

MANSFIELD, Sir James, Chief Justice of Common Pleas, altercation of, with Lord Kenyon in the House of Commons, iv. 60.—refusal of the Great Seal by, in 1806, 247.

MANSFIELD, Earl of, his illustrious descent, iii. 160.—education at Perth, 168.—his ride on a pony from Scotland to London, 171.—at Westminster School, 173.—at Oxford, 176.—intimacy with Lord Foley, 178.—a member of Lincoln's Inn, 18.—drinks champagne with the wits, 189.—intimacy with Pope, 189, 194, 201, 215.—early career at the bar, 193.—Letters on Ancient and Modern History by, 195.—crossed in love, 201.—cured by professional success, 203.—his marriage, 207.—becomes Solicitor-General, 209.—brilliant success in the House of Commons, 217.—prosecutes the rebel Lords, 224.—charge of having drank the Pretender's health, 236.—attack upon, for being a Jacobite, 239-242.—his celebrated vindication of our naval rights, 244.—his private life, 245.—patronizes Blackstone, 246.—refuses to be Prime Minister, 248.—made Attorney-General, 249.—declines to be Master of the Rolls, 251.—becomes Chief Justice of King's Bench, 258.—his unparalleled ascendancy in Westminster Hall, 265.—reforms of procedure introduced by, 269.—those contemplated, 274.—his treatment of the law of insurance, 278.—bills of exchange, 280.—right to freight, 287.—of "puffers" at auctions, 292.—his colonial law, 283.—his decision on Ransom Bills, 286.—on rights of British subjects in distant parts of the world, 287.—on right to wreck, 291.—on a slave's right to freedom, 291.—on the legality of pressing seamen, 293.—on wagers, 293 obloquy incurred by the direction to the jury in the action of Lord Grosvenor v. Duke of Cumberland, 299.—decision on literary property, 301.—on law of evidence, 304.—in *Perrin v. Blake*, 305.—charges of Junius against, 314, 364, 365.—his real love for common law modes of proceeding, 319.—his merits as a criminal Judge, 320.—and in deciding Scotch appeals, 321.—maiden speech in House of Lords, 325.—refuses the Great Seal a

second time, 328—his connection with Lord Bute, 336—differences between them, 339—reverses the outlawry against Wilkes, 342—retires from the Cabinet, 347—refuses to be Chancellor the third time, 350—attack on, by Lord Chatham, 352—his speech against Bill to reverse the decision of the Commons in the *Middlesex Case*, 357—his conduct on the trial of *Rex v. Almon* and others, 359—first letter of Junius to, 364—his defence of his conduct in Parliament, 367—again attacked by Junius, 374—his visit to Paris, 377—speech by, for prosecution of the American war, 379—created an Earl, 385—presides at the trial of *Horne Tooke* for libel, 387—his conduct at the death of Lord Chatham, 390—his love of religious toleration, 396—decisions in support of that principle, 398—great courage displayed by, in the *No Popery Riots*, 406—house destroyed by the mob, 411—speech justifying employment of the military to quell the riots, 415—his exposition of the law of high treason on the trial of Lord George Gordon, 420—his last speech in Parliament, 427—his decision as to the rights of juries in cases of libel, 430—inability to sit in court, 440—resigns his office, 46—address from the bar, 442—his mode of life in retirement, iv. 1—opinion of, on the introduction of jury-trial in civil cases in Scotland, 3—recollections of, by his grand-nephew, 5—amusements of, 6—care of his fortune, 6—abstains from an opinion on the Regency question, 7—views on the French Revolution, 8—continuing powers of memory, 10—last illness of, 11—death, funeral, will, 12—position of, among lawyers of the eighteenth century, 13—felicity of life to barristers practising under, 16—solution of the charge that he knew no law, 17—sermon written by, and preached by a bishop, 18—demeanour of, in society, 20—faciæ, 21—25—advice to a colonial judge, 25—position of, in the public eye, 26—industry and temperance of, 28—defects and faults, 30—want of original genius and moral courage, warmth of affection, 31—public conduct defended, 32—lampoon on, by Wilkes, Chief Justice, 33—character of, by Smollett, 34—by other contemporaries: Lord Monboddo, 35—Bishop Hurd, Bishop Newton, 36—imitations of the manner of his speaking, portraits of, 37—observations respecting the biography of, 38—criticisms on, by Lord Tenterden, 361.

Markham, Sir John, parentage, professional progress, i. 166—appointed Chief Justice of King's Bench, 167—his im-

partiality and integrity, 167, 172—dismissed, burial-place, character, 170, 172—remark of, in *Lady Belknappe's Case*, 134—remark by, to Edward IV., 320, n.

Marriage, memorable Act introduced by Lord Hardwicke in 1753 to prevent clandestine, iii. 95—defects in, since cured, 96—claim by executors of a lady to recover damages for a breach of promise of, refused, iv. 224—case reported in Dyer illustrating the custom in former times of uniting children in, i. 219.

Marlborough, Sarah, Duchess of, selects the Lord Chancellor, ii. 438—her retainer to Lord Mansfield, iii. 205—her interview with him at chambers, 206.

Marveilles, Mons. de, ambassador of Francis I. at Milan, beheaded *jure gentium* for conspiracy against the Prince to whom he was accredited, i. 235.

Maquer of Beauty, by Ben Jonson, played before the King and Queen at Theobald's and Whitehall in 1607, i. 299, n.

Mass, statutes against the celebration of, prosecution under, before Lord Mansfield, iii. 400.

Mathews, Charles, celebrated comedian, clever imitations of Lord Ellenborough by, iv. 304—personal interview of, with George IV., 306.

Maunsell, John, Chief Justice and Chancellor, i. 65.—See 'Lives of the Chancellors,' i. c. vii.

Maynard, Sergeant, atrocious conduct of, on the trial of Colonel Penruddock, noticed in 'Hudibras,' ii. 69—elected to the Convention Parliament, ii. 397.—See 'Lives of the Chancellors,' i. 1.

Meade, Justice of King's Bench, judgment of, on the marriage of minors, i. 219.

Meditations, by Sir Matthew Hale, published in 1653, ii. 220, 226.

Melville, Lord, impeachment and acquittal of, in 1806, iv. 255.

Merton, statute of, decision in *Doe dem. Barthwistle v. Vardhill* upon, respecting illegitimate children, iv. 374, n.

Middlesex, county of, Bill introduced by Lord Chatham to reverse the decision of the House of Commons respecting the election of Colonel Luttrell for, iii. 353—angry debates upon, 353—355.

Middlesex, Earl of, impeachment and conviction of, for malpractices, i. 376.

Midland Circuit always travelled by Chief Justice Dyer, i. 225—selected by the senior Judges as causing the least amount of labour, iv. 399.

Military, the legality of their employment to quell civil disturbances maintained, iii. 10.

- Millenarians, and other enthusiasts, extravagant plans of, in 1655, ii. 180.
- Milton, John, panegyric by, on Bradshaw, ii. 131—sonnet by, i. 434—quotations from works of, iv. 127.
- Milton, Lord, a Scotch Judge, letter to, from Lord Mansfield, iii. 212, 253.
- Milton, Sir C., brother of the poet, an incompetent man, appointed a Baron of the Exchequer in 1686, ii. 346—dismissed before 1688, 381.
- Miller, the publisher, memorable prosecution of, for reprinting the letter of Junius to the King, iii. 362.
- Ministry of the Cabal, ii. 283, 423; iv. 112—Lord Godolphin, 438; iii. 15—Sir Robert Walpole, 21, 89, 116—Duke of Newcastle, 104, 209—Duke of Devonshire, 122—Duke of Newcastle and Mr. Pitt, 123—Lord Bute, 336—George Grenville, 340—Lord Chatham, 319—Duke of Grafton, 350—Marquis of Rockingham, 378; iv. 59—Earl of Shelburne, iii. 382; iv. 63—Lord North, iii. 422—Coalition, 424; iv. 61—William Pitt, iii. 427; iv. 66—Lord Sidmouth, iv. 245—William Pitt, 246—"All the Talents," 248—Lord Liverpool, 258—Mr. Canning, 379—Lord John Russell, 39.
- Minors, case reported in Dyer illustrating the custom of marriage between, i. 219.
- Mitchell, Sir Francis, impeachment and conviction of, for extortion, i. 430.
- Mitchell, conviction of, under the statute of 11 Vict. c. 12, for an attack on the Queen, ii. 416, n.
- Moir, Lord, bill introduced by, for abolishing imprisonment for debt, iv. 89.
- Mompesson, Sir Giles, impeachment of, by the Commons for oppressions under royal grants, i. 422, 430.
- Monarchy asserted, a pamphlet by Glyn, Chief Justice, ii. 68.
- Monasteries founded in Scotland by Bruce, i. 76.
- Monbodo, Lord, character by, of Lord Mansfield, iv. 35.
- Moncreff Case, appeal in the, iii. 198.
- Monks of Canterbury, immense wealth collected by, at the shrine of A'Becket, i. 35.
- Monmouth, grand court of the Oxford Circuit held at, iv. 342—Duke of, attainer and execution of, iii. 91.
- Monody on the death of Lord Ellenborough by Lady Colchester, iv. 307.
- Montagu, Sir Henry, parentage, i. 409—legal education, 410—election to Parliament, 411—chosen Recorder of London, 412—conducts the prosecution of the Earl and Countess of Somerset, 413—made Chief Justice of the King's Bench, 415—orders the execution of Sir W. Raleigh, 419—resigns office and created a peer, 421—character, 423—descendants, 424.
- Montague, Baron of Exchequer, opinion on the power of George I. respecting the marriage and education of his grandchildren, iii. 25.
- Montague, Sir Edward, parentage, i. 200—maiden speech, and its results, 201—great feast when called Serjeant, 202—appointed Chief Justice of King's Bench, 203—extra-judicial decisions, 204—Chief Justice of the Common Pleas, 205—makes the will of Edward VI., 208—deserts Lady Jane Grey, removed from office by Queen Mary, death, 209—epitaph, 210.
- Montague, Sir William, Chief Baron, dismissal of, for refusing to support the King's dispensing power, ii. 346.
- Montague, Lord, mysterious letter to, respecting Gunpowder Plot, i. 310.
- Montesquieu, President, excellent work by, on the 'Decline of the Roman Empire,' iii. 195—admiration and remark of, on Lord Mansfield's celebrated memorial to the Prussian Minister in vindication of the British naval rights, 245.
- Montfort, Simon de, rebellious proceedings and character of, i. 71.—See 'Lives of the Chancellors,' i. 151.
- Moots in the Inns of Court, i. 189, 286—dissuse of, iv. 155.
- More, Sir T., History by, of Richard III., i. 177, 201—chairman of the committee to draw up the articles against Wolsey, 193—Speaker of House of Commons, 201—trial and most unwarrantable execution, 197.—See 'Lives of the Chancellors,' i. 503.
- Morrice, Secretary, attack by, on the "Comprehension Bill," ii. 197.
- Morris, Mr., verses by, iv. 31.
- Morris, Captain, reasons for drinking stated by, iv. 31, n.
- Morris, Edward, Master in Chancery, anecdote related by, iv. 140.
- Mostyn, Governor, damages recovered against, for cruelty in Minorca, iii. 287.
- Mouncey, Captain, action against, for negligent management of a ship, iv. 223.
- Mucegros, R. de, a Chief Justiciar to King John, i. 50.
- Murder, appeal of, abolished by statute 59 Geo. III., c. 46, iii. 47, n.—iv. 232—forms of proceeding in, i. 31.
- Murray, Lord, a Judge of Session, personal recollections of his kinsman Lord Mansfield, iv. 5.

N.

NAPIER family, origin of the name of the, i. 67, n.

Napoleon, negotiations for a peace with, when First Consul, in 1802, iv. 205—trial of Peltier for libel on, 242—hostilities with, recommenced, 245.

Navigation Laws, events which occasioned the, ii. 111.

Navy, the objectionable measure for better manning, brought in and abandoned in 1741, iii. 88.

Naylor, the Quaker, commitment of, by the Parliament, ii. 73.

Negotiable securities, right of the holder of, for value, to recover, unless fraud on his part established, iv. 375.

Nelson, Lord, sarcastically snubbed by Lord Ellenborough when a witness on the trial of Colonel Despard, iv. 240.

Neville, Sir E., Baron of the Exchequer, dismissed for refusing to support the King's dispensing power in 1630, ii. 346.

Newgate broken into and the prisoners liberated by the No Popery mob, iii. 409.

Newdigate, Sir Richard, parentage, ii. 75—becomes a Judge under Cromwell, 76—dismissed for his independent conduct on the trial of Colonel Halsey, 77—restored by Monk, superseded at the Restoration, *ib.*—life saved by Colonel Halsey, subsequent career, 78—and epitaph, 79.

Nisi Prius, proceedings at, improved and settled by Lord Mansfield, iii. 273.

Noble's Memoirs of the Cromwell family, extracts from, ii. 81, 113.

Norfolk, Duke of, accused of treason, i. 207—his narrow escape from execution, 208.

Normandy, Courts for the administration of justice established in, previous to the conquest of England, i. 2—civilization introduced into England from, 73.

North, Roger, mistake of, about Chief Justice Scroggs, ii. 251—writings, 190, 194, 204—censure of, on Sir M. Hale, 207—extracts from Life of Lord Guildford by, ii. 8, 190, 194, n.; 204, 207, 209, 237, 259, 284, 295, 300, 318, 323, 326, 330, 357; iii. 7.

North, Lord, war with America carried on by, iii. 394—Coalition Ministry formed by, 424—witty remark of, iv. 65.

Northey, Sir Edward, Attorney-General, iii. 84.

Northington, Earl of, Attorney-General in 1756, iii. 125—amusing interview of, with Chief Justice Willes on announcing his acceptance of office as Lord Keeper, *ib.*—See 'Lives of the Chancellors,' v. 174.

Northumberland, Earl of, inquiry respecting his death, i. 254.

Norwich, Earl of, trial of, ii. 126—life of, saved by the casting vote of the Speaker of the House of Commons, 126.

Nottingham, Lord, the father of equity ii. 203—his character of Sir Matthew Hale 224.—See 'Lives of the Chancellors,' iii. 378.

Noy, projects ship-money as a scheme for raising money, i. 365, 442, ii. 41—made Attorney-General, 41—death, 43—deep learning of, 164.

O.

OAK, Royal, order of Knighthood projected by Charles II., ii. 247.

O'Connell, Daniel, M.P., remark by, that an indispensable qualification of a Judge is that he must be "a downright tradesman," iii. 4.

O'Connor, Arthur, incidents on the memorable trial of, at Maidstone, iv. 194, 204.

Odo, first Chief Justiciar, a Norman by birth, arrival in England, i. 5—appointment, 6—trials before, 7—quarrels with the King, 8—arrested and liberated, 9—conspires against Rufus, 10—banished, 12—dies in destitution at Palermo, *ib.*

Old Bailey, deaths of Judges occasioned by gaol-fever when attending, iii. 75.

Oneby, Major, trial and conviction of, for murder by duelling in 1725, iii. 33—suicide of, 43.

Onslow, Speaker, remarks by, on the judicial qualifications of Lord Holt, iii. 4.

Oratory, Parliamentary, of the last century, iv. 14, 28, n.

Ordericus Vitalis, early History of England by, i. 12, 19.

Ordinance, self-denying, brought in by Cromwell, 1642, ii. 67, 102.

Origines Judiciales by Dugdale, extracts from, i. 202, n., 230, n., 447, ii. 191, 237.

Overbury, Sir Thomas, murder of, i. 329—circumstances relating to the murder of, 413, ii. 215.

Owen, Sir John, trial and conviction of, for treason in 1648, ii. 126.

Owen, William, memorable trial of, for publishing a pamphlet severely reflecting on the House of Commons, iii. 74, 100.

Oxford Circuit, anecdotes of, ii. 119; iii. 134, 321; iv. 335—counsel on the, 140—led several years by Lord Campbell in a bombazeen gown, 338—incidents upon, 336—grand circuit court on, 342—conveyance of letters on, in 1798, 344.

Oxford, earldom of, claim to, allowed by House of Lords, i. 439—new creation of, by Queen Anne, 440.

Oxford City, the famous "Provisions" agreed to in, i. 68—scene in the High Street at, in 1753, described by Lord Chatham, iii. 243.

P.

PALEY, Archdeacon, tutor of Lord Ellenborough, iv. 201.

Paigrave, Sir F., introduction by, to the Rolls of the Curia Regis, i. 44, 46.

Palmer, Sir Jeffrey, practised as a chamber counsel during the Commonwealth, adducing himself to conveyancing, ii. 136.

Pantaleon, Sa Don, a Portuguese, murder committed by, ii. 56.

Paris, Matthew, History by, i. 49, 58, 62.

Park, Sir James Allan, Justice of the Common Pleas, a native of Scotland, intimate with Lord Mansfield, iii. 159; iv. 5—a leader on the Northern Circuit, 199— anecdotes respecting when at the bar, 292—appointed a Judge, 346—excellent work by, on Marine Assurances, iii. 278.

Parker, Sir Thomas, reasons for his appointment as Chief Justice of England, iii. 15.—See Maclesfield.

Parker, Chief Baron, vigorous old age of, iv. 23.

Parkinson v. Lee, decision in, that there is no implied warranty from high price of goods, iv. 219.

Parliament, cheering in, manner of, previous to the eighteenth century, i. 98, n.—consulted by the King on questions of foreign and domestic policy, 106—held at Shrewsbury, condemns the Prince of Wales, 87—appeals in *tempore* Edward I., 97—Judges summoned to, by Edward II., 101—supplies sought from by, and refused to Edward III., 106—statutes passed by, in 1353, 109—opinion of the Judges on the privileges of, in 1387, 116—result of elections for the, in 1389, 121—proceedings by, against the Judges for treason, 122—meeting of, in 1399, to depose Richard II. and confirm the crown to Henry IV., 136—succession to the throne debated in, 172—meeting of, in 1486, 185—articles of impeachment by, against Wolsey, 193—trial of Anne Boleyn before, 198—mode adopted by Henry VIII. for obtaining supplies from, 201—Bills of Attainder passed by, 186, 204—speech of Speaker Wray to Queen Elizabeth on the opening of, in 1571, 237—proceedings in, during the Session of 1581, 240–243—Coke's speech to the Queen as Speaker, in 1593, 293—address by, against the arbitrary proceedings of James I., 322—description of the members of, in 1621, 361—abuse of monopolies exposed in, 364, 411—impeachment of Bacon by, 365—discussions in, respecting the marriage of Charles I. and the war with Palatinate, 369—prohibitory

the King to discuss matters of State, 370—Protestation entered in Journals of, 371—torn out by the King, 372—abrupt dissolution of, in 1625, 378—attempt to exclude Sir E. Coke from, 379—attempt by Charles I. to intimidate, 381—Petition of Right debated and passed by, 388—sudden prorogation of, in 1628, 389—dispute between the Houses of, respecting their separate jurisdiction, ii. 11—speech of Sir R. Crewe to James I. in the Session of 1614, i. 439—Oxford Peerage Case decided in, 440—opinion of Chief Justice Hyde on the privileges of, ii. 6—impeachment of Judges by, in 1641, 30—privileges of, debated in the Courts of Law and Star Chamber, 38—privileges of, decided by Rolle, 55, 100—conduct of members in the Long, 92—Commissioners appointed by, to treat at Uxbridge, 102—Republican Judges allowed to sit in, 113—meeting of the Barebones, 45—divisions in, respecting the execution of the Royalist peers, 195—proceedings in, against Chief Justice Kelynge, 154—right of, to commit for a breach of privilege, recognised by the Judges in 1676, 248—proceedings by, against Scroggs, 287—contest between both Houses of, respecting the commitment of Pemberton, 281—improper commitment of a Judge by, for a decision in a court of law, 311—proceedings in, respecting the Indemnity Act, 377—abrupt dissolution of, for proceeding with the impeachment of Lord Danby, 389—conference between both Houses of, on the Abdication and Desertion Question, 397—proceedings in the Upper House of, in the case of *Rex v. Knollys*, 418—unprecedented state of antagonism between both Houses of, 427—privilege of, checked by 3 Vic. c. ix., 436—Septennial Bill debated in, iii. 31, 118—power of, to punish in a summary manner, discussed, 87—Act passed in, for attainting the sons of the Pretender, 90—Marriage Bill debated in, 95—Regency Bill passed in 1751, 235—members of, not privileged to publish speeches delivered in, with a view to libel an individual, iv. 116—impeachment of Warren Hastings by, 165—Corporation and Test Acts repealed by, 384—Catholic Emancipation passed by, 396—constitutional views of Lord Thurlow on the privilege of, to print and publish their proceedings, 113—opinions of Lord Fenterden on the same right, 394.

Parliamentary privilege, opinions of the Judges on, in 1387, i. 116—breach of, alteration in returns to the Habeas Corpus introduced by Lord Campbell in the case of *Hansard v. S. Stockdale*, ii.

- 436, n.—right of both Houses to print and publish their proceedings recognised by Lord Kenyon, iv. 113—to imprisonment for contempt, 228—views of Lord Tenterden respecting, 394.
- Parnyng, Sir R., Chief Justice of King's Bench and Chancellor to Edward III., a man of great learning and ability, i. 105.—See 'Lives of the Lord Chancellors,' i. c. xiv.
- Partnership, dissolution of, decision respecting by Lord Kenyon, where one of the firm is lunatic, iv. 78.
- Pate-hulle, Hugh de, an impartial Judge, Chief Justiciar, i. 65.
- Pat-hull, Simon de, Chief Justiciar, i. 50.
- Paul, Emp'r of Russia, libel on, in the *Courier*, iv. 105.
- Paul, Dr., Advocate-General, signs the masterly answer to the Prussian Minister in 1753, iii. 244.
- Pault, Sir Amyas, puts Wolsey in the stocks, i. 189.
- Peacham, shameful prosecution of, upon alleged high treason, i. 327.
- Peetage, reasons for conferring the dignity of, on the Chief Justice of England, iii. 104; iv. 91.
- Pelham, Mr., Prime Minister, sudden death of, iii. 73, 112.
- Peltier, prosecution of, for a libel on Napoleon, iv. 242.
- Pemberton, Sir Fr., his chequered career, ii. 273—origin and education, 275—his profligate mode of life, 276—committed to the Fleet, reformation, &c.—discharge from prison, 278—his success at the bar 280—contest respecting him in Parliament, 281—appointed a Justice of the King's Bench, 283—displaced, returns to the bar, 284—made Chief Justice of England, 285—his conduct on State trials, 287—consents to be Chief Justice of the Common Pleas, 294—his courteous behaviour to Lord Russell, 298—dismissed for such moderation, 299—his decisions in civil cases, 300—commences practice at the bar a third time, 301, 312—counsel for the Bishops, 302, 370—not promoted after the Revolution, 307—committal to Newgate for a breach of Parliamentary privilege, 311—death and epitaph, 312—violent altercation with Sir E. Saunders in Lord Danby's case, 321—resigns his office, 323.
- Penal code, the severity of a, asserted as necessary by Lord Ellenborough, iv. 293.
- Penenden Heath, earliest recorded trial held on, i. 1, 7.
- Penruddock, insurrection at Salisbury headed by, against Cromwell, ii. 61—his trial and execution, 69.
- Pepys, Samuel, extracts from the Diary of, i. 424, n.; iv. 316, n.
- Pepys, an eminent lawyer, reluctant consent of, to act as a Judge under Cromwell, ii. 76.
- Perceval, Right Hon. S., correspondence of, with Lord Ellenborough, iv. 252-255.
- Perrin v. Blake, decision of the Court of King's Bench in, reversed, i. 289, n.; iii. 305.
- Perry, Mr editor of the *Morning Chronicle* ex-officio information against, iv. 99, 103, 259.
- Peryam, Sir William, Chief Baron of the Exchequer in the reign of Elizabeth, i. 276.
- Peterborough Cathedral, its destruction prevented by Oliver St. John, ii. 112.
- Petition of Right, i. 389—framed and carried by Coke, 282; ii. 164.
- Pheasant, Peter, a Judge, under Cromwell, ii. 108.
- Pigot, Lord, trial of Stratton and others for deposing, iv. 54.
- Pillory, punishment of the, abolished in 1814, iv. 280.
- Pine, Mr., acquittal of, on a charge of treason, ii. 13.
- Pio Nono, creation by, of the Archbishopric of Westminster, and partition of all England into Roman Catholic sees, iv. 239, n.
- Piracy of books, no action lies for publishing copies of obscene publications, iv. 366.
- Pitt, Right Hon. W., action by, for a libel in the *Morning Herald*, iii. 436—speeches by, iv. 65—retirement, 201—resumes the office of Prime Minister, 245—death of, 246.
- Pizarro, famous melodrama of, anecdote of Lord Kenyon at the performance of, iv. 47.
- Plague in London, numbers who died of, ii. 151.
- 'Pleader's Guide,' by Anstey, anecdotes respecting, iv. 333, n.
- Pleading, colour in, defined, ii. 157.
- Plomer, Sir Thomas, a counsel for Warren Hastings, iv. 168, 188.
- Plumton, Gilbert de, false accusations brought against, i. 28, 29.
- Plunkett, Lord, reasons for his failure as a debater in the House of Lords, iv. 14—appointed Chief Justice of Common Pleas in Ireland, with an English Peerage, 379.
- Poems by Lord Tenterden, iv. 343, 345, 346, 353, 410-414.
- Policies of Insurance, decision of Chief Justice Wilmut, on the proper construction of, iii. 148—on the ships of enemies forbidden by statute and void at common law, 94, 232.

- Polluxfen, Sir Henry, counsel for the Bishops, ii. 302—argues the City Quo Warranto case, 325—appointed Chief Justice of the Common Pleas in 1688, 388.
- Pomfret, Countess of, related to Judge Jeffreys, insulted in the West of England, ii. 335.
- Pope, Alexander, friendship and intimacy with Lord Mansfield, iii. 190—verses by, addressed to Lord Mansfield, 201, 215—appoints Lord Mansfield one of his executors, with a bequest, 216.
- Popery, monster meetings to petition Parliament against, in 1780, iii. 403.
- Popham, Sir John, birth, education, i. 247—youthful profligacy, 248—reformation and professional progress, 249—Speaker of the House of Commons, 251—Attorney-General, 253—prosecutes Secretary Davison, 257—made Chief Justice of England, 259—gallant conduct in Essex's rebellion, 260—his conduct on the trial of Essex and his accomplices, 261—on the trial of Raleigh, 263—on the trial of Guy Fawkes and his associates, 266—his death, 268—legends respecting the manner in which he acquired Littlecote, 269—his reports, wealth, 271—his descendants, 272.
- Porchester, Lord, argument by, that the exercise of the Royal authority, during the King's illness, should be restored to the Prince of Wales, iv. 85.
- Porson, Professor, anecdotes of, at Cider Cellar, ii. 385; iv. 333, n.
- Portman, Sir William, appointed Chief Justice of King's Bench, June, 1554, i. 211.
- Postnati, case of the, i. 279, 317.
- Porteous, Captain, bill for disfranchising the city of Edinburgh, for alleged misconduct of the inhabitants for the murder of, rejected, iii. 199.
- Portsmouth, Duchess of, a witness for Fitzharris, tried for being accessory to the Popish plot, ii. 287.
- Powell, Sir John, Justice of the King's Bench, his honest conduct in the trial of the Bishops, ii. 369—reprobates the doctrines of the Solicitor-General, 370—opinion in favour of the Bishops, 371—dismissed from office, 307, 375—examined by the House of Commons in support of the Indemnity Act, 378—appointed a Justice of the Common Pleas in 1688, 380—his judgment in the Aylesbury case, 430.
- Powers, admirable work on, by Lord St. Leonards, iv. 338, n.
- Powys, Sir Littleton, made Justice of King's Bench in the reign of Queen Anne, iii. 18.
- Powys, Sir Thomas, Attorney-General, ii. 303—Judge of the King's Bench superseded on the accession of George I., as friendly to the Pretender, iii. 18.
- Pratt, Sir C., acts as counsel for Owen in the foolish prosecution of, iii. 70—sworn in Chief Justice of the Common Pleas, 340.—See 'Camden.'
- Pratt, Sir John, his origin and progress at the bar, iii. 17—made a Judge of the King's Bench, 18—Chief Justice of England, 19—his conduct in Dr. Bentley's case, 21—on the trial of Laver, 23—opinion on the power of the King respecting the marriage of his children, 25—death, 26.
- Presbyterians, English, in the eighteenth century, iii. 80.
- Prescription and Tithes, measures passed by Lord Tenterden respecting, iv. 391.
- Pressing seamen, legality of, for the British navy, iii. 293.
- Preston, Lord, his trial for high treason, ii. 412.
- Preston, Mr., 'the eminent conveyancer, facetious retort of Lord Ellenborough to, iv. 297.
- Prestonrange, Lord, a Judge of Scotland, unsuccessful applications by, to Lord Mansfield, for his interest in obtaining a higher position, iii. 330.
- Pretender, The, scheme of Bolingbroke to bring in, iii. 31—proceedings of the Highland Chiefs on the landing of, 98, 223—Act for attainting the sons of, 89—landing of, at Moldart, 223.
- Price, Benjamin, Clerk of Assize on the Oxford circuit, early patron of Lord Tenterden, iv. 335.
- Price, Robert, Baron of the Exchequer, judgment of, in the Aylesbury case, ii. 431.
- Prideaux, Edward, large sum paid by, to Judge Jeffreys for his ransom, ii. 334.
- Prisoners, anxiety of, to be tried before a Judge of the superior Courts, ii. 119, n.
- Privilege.—See 'Parliament.'
- Pronunciation of English, want of system in, iii. 177.
- Property, forfeiture of, the punishment inflicted by all nations for attempts to overturn an existing government, iii. 92.
- Prophets, a band of fanatics so called in the time of Lord Holt, iii. 6.
- Protestant Association, monster petition from, to the House of Commons, iii. 403.
- Prudhoe Castle, obstinate defence of, against the Scots, i. 23.
- Prussia, King of, attempt by, to remodel the law of nations in reference to the right of belligerents seizing upon the ocean the goods of enemies in neutral ships, iii. 244.

Prynne, prosecution of, for publishing *Histrio-mastix*, ii. 17.
 Puritans, their classical acquirements in the seventeenth century, ii. 156.
 Pusey, H., Bishop of Durham, Chief Justice by purchase, i. 40—his licentious youth, meritorious middle-age, 41—blindness, 42—deposed, death, 43.
 Pye, Sir Robert, committed to the Tower by the House of Commons, ii. 77.
 Pynsant Estate Case, judgment in, reversed, iii. 375, n.

Q.

QUAKERS, marriages of, Lord Hale's opinion on their validity, ii. 209—laws respecting, iii. 397—facetious rebuke of Lord Ellenborough to, iv. 300.
 Quarterly Review, amusing anecdote of Lord Tenterden recorded in, iv. 408.
 Quarter Sessions, Courts of, causes which occasioned the creation of, i. 106—practice at, useful for a forensic education, 54.
 Queensberry, Duke of, anecdotes of, iii. 294.
 Questions, leading, the allowance of, even on cross-examination, frequently abused, ii. 304.
 Quo Warranto, memorable suit of, against the City of London, ii. 294, 296.

R.

RADLEY, Richard, convicted and fined for speaking scandalous words of Chief Justice Scroggs, ii. 262. j
 Raleigh, Sir Walter, trial and monstrous conviction of, i. 263, 304—execution awarded against, 419.
 Ralph, Historical Notices by, ii. 415.
 Ransom Bills, legality of, maintained by Lord Mansfield, iii. 286—forbidden by Act of Parliament, 287.
 "Rattling," crime of political, unknown during the reign of George II., iii. 35, 323.
 Raymond, Sir Thomas, a Judge of Common Pleas, and afterwards of King's Bench, peculiar zeal of, in the Quo Warranto case, iii. 27.
 Raymond, Lord, parentage, iii. 27—called to the bar, 28—his conduct as counsel in several important trials, 29—Solicitor-General, 31—speech against the Septennial Act, 31—Attorney-General, 33—a Judge of the King's Bench, 35—made Chief Justice of England, and raised to the Peerage, 36—his doctrine respecting the publisher of obscene libels, 37—settles the law respecting murder and

manlaughter, 41—his judgment on the law of libel, 47—abstinence from politics, 50—death, 51—monument and epitaph, 51—panegyric upon, 53—legal offices held by, 433.
 Raynard's Case, decision of Lord Coke in, i. 383, n.
 Raynsford, Sir R., his early career, ii. 246—a Baron of Exchequer, Judge of King's Bench, Chief Justice of King's Bench, 247—decision in the privilege case, 248—removed from office, death, and character, 249.
 Ravensworth, Lord, improper publication of a private conversation by, respecting Lord Mansfield and others, iii. 238.
 Readings in the Inns of Court, i. 286, 410.
 Rebellion of 1745, incidents of, ii. 288, iii. 90–93, 222–230.
 Receipt tax, debate on, iv. 65—enforced, epigram respecting the origin of, iii. 424.
 Redesdale, Lord, personal appearance of, iv. 107—censure by, on the legal decisions of Lord Mansfield, iii. 313—dulness of speeches in Parliament by, iv. 15.
 Redgrave, church of, burial-place of Lord Holt, iii. 2—its manorial history, 3.
 Red-Lion Square, once a fashionable portion of London, and residence of the Common Law Judges, iii. 51.
 Reeve, John, trial of, for libel on the House of Commons, iv. 102.
 Reeves, Sir T., Chief Justice of the Common Pleas, iii. 46.
 Regency Bill, debate on the, of 1751, iii. 94, 234—debate on the, of 1789, iv. 87.
 Register, a general, for deeds affecting real property, its establishment urged, ii. 54, n.
 Regrating and forestalling, prosecutions for, scouted by Lord Holt, ii. 408—encouraged by Lord Kenyon, iv. 129.
 Reports of decisions in Courts at Westminster become obsolete by recent changes, iv. 218.
 Reports of Lord Coke, containing good decisions and rulings, i. 339—wonderful monuments of his learning and industry, 398—of Popham, not of authority, 271—of Dyer, Chief Justice, 227—of Rolle, Chief Justice, remarkable for their precision and acntracy, ii. 64—of Lord Kenyon, inelegant composition of, iv. 47.
 Residences of Chief Justices : of Sir Robert de Brus, i. 77—of Lord Campbell, *ib.*—of Sir E. Coke, 407—of Sir J. Ley, 433—*cf.* Sir R. Crewe, 446—of Sir John Bramston, ii. 33—of Sir M. Hale, 229—of Sir R. Raynsford, 249—of Sir W. Scroggs 270—of Sir Francis Pember-

- ton, 312—of Sir Edmund Saunders, 329—of Sir John Holt, iii. 2—of Lord Raymond, 61—of Sir William Lee, 73—of Sir Dudley Ryder, 86, 109—of Sir John Willes, 126—of Sir Eardley Wilmot, 147—of Lord Mansfield, 185; iv. 1, 8—of Lord Kenyon, 143—of Lord Ellenborough, 307.
- Retainer, a general, its amount, iii. 206.
- Revolution in France, opinions of Lord Mansfield on, iv. 8—Burke's book on, 10.
- Revolution of 1688, justified by exhibition of the abuses which occasioned it, i. 282; ii. 379.
- Richard Cœur de Lion, adventures of, i. 39, 40, 42—death of, 48—claim to the Crown of Scotland renounced by, 94.
- Richard II., rebellion at the accession of, i. 112—devoted himself to De Vere, 114—deprived of authority by a commission, 116—commission violated by, at Nottingham, 45—agrees to receive deputies from the Barons, 120—proceedings in Parliament before, 121—presides at the trial of the Judges who advised the violation of the commission, 131—deposition of, 135—imprisoned in the Tower, 136—indictment against, 138—Bolingbroke and Norfolk banished by, 143—charges against, 144.
- Richard III., history of, by Sir Thomas More, i. 177.
- Richardson, Mr. Justice, anecdote of Lord Tenterden related by, iv. 314.
- Richardson, Sir Thomas, compelled to serve as Speaker of the House of Commons, ii. 9—made Chief Justice of Common Pleas, 13—his wife made a Peeress of Scotland, 15—made Chief Justice of England, 16—his conduct in the Star Chamber, 16, 17—his ordinance against wakes and church-ales, 18—his death, jests, character by contemporaries, 20—descendants, 21.
- Richmond, Duke of, his Bill for Parliamentary Reform, iii. 405.
- Rider, Cardanus, British Merlin by, iii. 74.
- Rigby, Right Hon. Richard, Paymaster-General of the Forces, attack by, on Kenyon when Attorney-General, in the debate respecting public accountants, iv. 66.
- Right, Petition of, i. 433—debate on, 386, 388; ii. 37, 164.
- Ripon, Earl of, incapacity of, as Prime Minister, iv. 383.
- Robertson, Dr., Life of the Emperor Charles V. by, i. 33.
- Rochester Castle, siege of, by William Rufus, i. 11.
- Rockingham, Marquis of, short administration of, iii. 422—death of, iv. 63.
- Rodney v. Chambers, important decision in, respecting deeds of separation, iv. 218.
- Roger, Bishop of Salisbury, Chief Justiciar, i. 18.
- Rogers, Samuel, extracts from the 'Table Talk' of, iv. 146, 303.
- Rolle, Henry, parentage, ii. 48—his excellent Law Digest, 49, 63—he retires from Parliament on commencement of the troubles, 51—becomes a Judge under the Parliament, 52—made Chief Justice of Upper Bench, 52—his conduct on the execution of the King, 54—his judicial decisions, 55—in danger of being hanged, 61—refusal to try Royalist Insurgents, 62—resignation and death, 63.
- Rolle, John, M.P. for Devon, his support of the Westminster scrutiny, iv. 75.
- Rolliad, criticisms on the, a political work published by the Whigs in 1784, extracts from, iv. 74, 82.
- Roman Civil Law, masterly sketch of, by Gibbon, iii. 284—a knowledge of, indispensable for a proficiency in the Common Law of England, i. 75; iii. 133, 154, 186, 198—study of, encouraged at Trinity Hall, Cambridge 133, 164.
- Romilly, Sir Samuel, efforts by, to ameliorate the criminal laws, iv. 293.
- Rooke, Sir Giles, Justice of the Common Pleas, decision of, on the trial of Redhead, Yorke, iv. 195—character of, 195, n.
- Rookwood, Ambrose, trial of, for conspiring to effect the death of William III., ii. 414.
- "Roome," the word in old English used for "office," i. 217.
- Roos, Lord, complaint by, against Mr. Justice Theswite, i. 159.
- Rumbold, Sir Thomas, a friend of Warren Hastings, iv. 168.
- Runnymede, Charter of, i. 56, 62.
- Rupibus, Peter de, a stout soldier, Bishop of Winchester and Chief Justiciar, i. 50—tutor to Henry III., 51—his aversion to the English, 52—takes the Cross, 53—gains a battle for the Pope, his revengeful conduct to De Burgh, 57—his popularity and influence, 59—dies at Farnham, 54.
- Russell, Lord John, education of, at a Scotch university, iii. 79—as Prime Minister, appoints Lord Campbell to be Chief Justice of England, iv. 39.
- Rusby, an eminent corn-merchant, convicted and severely punished, for forestalling, iv. 131.
- Rushworth, collections by, extracts from i. 387; ii. 2.
- Russell, William, Lord, incidents of the memorable trial and execution of, in 1683, ii. 298.

Russell, Rachael, Lady, heroism and tenderness of, on trial of her husband, ii. 298.
 Russia, Alexander Emperor of, remark by, on the opposition in the English Parliament, iv. 264, n.
 Ryder, Archbishop of Armagh, biographical anecdotes of, iii. 79, 105, 107.
 Ryder, Sir Dudley, parentage, iii. 78—education, 79—made Solicitor-General, 81—Attorney-General, 85—his parliamentary speeches, 86—his conduct as an advocate, 100—is made Chief Justice, 103—his sudden death when about to be raised to the Peerage, 104—the dignity bestowed afterwards on his son, 106—letters to Lady Ryder, 108—descendants, 114.
 Rye-House Plot, ii. 296—trials, 332.
 Rymer's *Fœdera*, extracts from documents preserved in, i. 147, 356.

S.

SACHEVERELL, Dr., memorable trial of, iii. 15.
 Sackville, Lord G., his interview with Lord Mansfield, iii. 438.
 Salisbury, Burgess, Bishop of, tutor at Oxford to Lord Tenterden, iv. 319, 328.
 Satire, *Essay on the Use and Abuse of*, by Lord Tenterden, iv. 325.
 Saunders, Sir Edmund, draws up the London Quo Warranto case, ii. 294—made Chief Justice of England, 296—parentage, 314—legal education, 316—rapid progress at the bar, 317—his excellent reports, 318—why discontinued, 319, n.—knights, 320—quarrel with Pemberton, Chief Justice, 321—made Chief Justice of King's Bench, 322—London Quo Warranto, *ib.*—the hearing, 324—Judgment on it, 325—his conduct in *Rex v. Pilkington*, 326—his last illness, 329—death, *ib.*—habits and appearance, *ib.*—his will, 331.
 Saunders, Sir Edward, Chief Justice of the King's Bench, i. 211.
 Sawyer, Sir Robert, Attorney-General, ii. 268—argues the Quo Warranto case, 325—dismissed for refusing to argue the King's dispensing power, 346—counsel for the seven Bishops, 302, 369—refuses to accept the fees, 307, n.—disclosures by, in the House in debate on the Indemnity Act, 378.
 Sayer v. Bennett, i. Cox, 107—direction of Lord Kenyon in, respecting a Lunatic Partner, iv. 78.
 Sayer's reports of cases decided in the time of Chief Justice Ryder, iii. 103.
 Saxe, Lord, action of trespass by, for

cattle seized in payment of ship-money, ii. 25.
 Saxon Chronicle, quotation from, i. 7, 9, 12, 19—monastery on Thornbury Island, 17.
 Scotland, Annals of, i. 26, 63—monasteries in, founded by Bruce, 77—homage by its Kings, 16, 26—arbitration respecting the Crown of, 94—Universities of, system of education at, iii. 165—currency in, explained, 167—school discipline in, 166—Jury trial introduced into, iv. 4.
 Scroggs, Sir Wm., errors respecting his family, ii. 250—his true parentage, 251—in arms as a cavalier, studies law, called serjeant, 252—arrested for debt, introduced to the King, made a Justice of the Court of Common Pleas, 253—plots against Chief Justice Raynsford, succeeds as Chief Justice of King's Bench, his conduct respecting the Popish plot, 255—trial of Stayly, 256—his conduct on other trials, 258, 262—changes sides, 259—procures an acquittal, is attacked and defends himself, 260—dialogue with Dangerfield, 263—scheme for extinguishing the liberty of the press, 264—prevents the Duke of York being indicted as a popish recusant, 265—accused before the King in Council and acquitted, 266—impeached by the Commons, 267—cashiered, 270—death, character, 271.
 Scrope, Henry le, Justice of Common Pleas, made Chief Justice of the King's Bench, i. 101.
 St. Philip's, port of, the flight of Admiral Byng from, iii. 254.
 Seamen, legality of pressing for the Navy explained and justified by Lord Mansfield, iii. 293.
 Seditious publications, circular letter from Lord Sidmouth, in 1817, for the suppression of, iv. 273.
 Segrave, Stephen de, Chief Justiciar, i. 60, 64—wives and descendants of, 64.
 Selden, John, improper prosecution of, for speeches delivered in the House of Commons, ii. 5, 7—proceedings against, for supporting Petition of Right, 38—opposition by, to the Bill of Attainder of Lord Strafford, 95—Table-talk by, 220—will and legacies, 242.
 Seneca, Thyestes of, translated by Sir M. Hale, ii. 229.
 Separation, deeds of, when valid, iv. 218.
 Septennial Act, famous debate on the motion for the repeal of, iii. 118.
 Serjeants at Law, coif, why adopted by, i. 86, n.—expensive festivities at the call of, 202, 229—wigs, origin of the custom of, ii. 123—dress of, 241.
 Sessions, Quarter, origin of, i. 106—useful forensic practice at, iv. 54.

- Settlement, Act of, important provisions in, *iii*. 222.
- Sewell, Sir Thomas, Master of the Rolls, death of, *iv*. 70.
- Shaftesbury, Earl of, committed to the Tower, *ii*. 248—applies for writ of Habeas Corpus, and is refused, 248—joins with Lord Russell and the Whigs in an indictment against the Duke of York, 268, 269—charge against, of treason, 291.—*Sce* 'Lives of the Chancellors,' *iii*. ch. xc.
- Shakespeare, scenes and quotations from, *i*. 60, 66, 88, 144, 163, 167, 190, 305, 396, *n*.; *ii*. 217, 274—legal knowledge of, *i*. 60—*anachronisms* of, 167.
- Shapwick, near Glastonbury, burial place of Rolle, Chief Justice, *ii*. 63.
- Sharesall, Sir William, Chief Justice of King's Bench, passes Statute of Treasons and of Labourers, *i*. 109—speech to Parliament by, *ib*.
- Shelburne, Lord, speech by, on the American war, *iii*. 381—motion by, for arming the people, *iv*. 60—ministry of, 64.
- Shelley's case, rule in, explained, *i*. 289; *iii*. 307—argument of Lord Mansfield respecting, *iv*. 16.
- Shelley, Justice of Common Pleas, interview of, with Wolsey, *i*. 192.
- Sherfield, Recorder of Salisbury, prosecution of, in the Star Chamber, for breaking a painted window in a church, *ii*. 16.
- Shepherd, Sir Samuel, complimentary observation on, by Lord Kenyon, *iv*. 142—incurable deafness the reason of his non-appointment as Chief Justice of England, 327, 363.
- Sheridan, Right Hon. R. B., speeches by, *iv*. 66—memorable cross-examination of, 197.
- Sheriffs, privileges and disabilities of, *i*. 380.
- Ship-money, an invention of Noy's, *ii*. 41—resistance to it by Hampden, 394—extra-judicial opinions of Judges on, 43—arguments on, 88.
- Ships and Shipping, treatise respecting, by Lord Tenterden, a masterly analysis of the subject, divided logically and lucidly, propositions laid down with precision, supported by just reasoning, fortified with dicta and decisions of jurists and Judges, in a clear, simple, idiomatic style, a beautiful specimen of genuine Anglicism, *iv*. 337, 342—its fame in America, 338.
- Shower, Sir Bartholomew, Reports by, *ii*. 300, *n*.—one of the counsel for the Bishops, 369—his defence on behalf of Amb. Rookwood encouraged by Holt, Chief Justice, 415.
- Shrewsbury, Parliament held at, by Edward I., *i*. 87.
- Shrewsbury, Countess of, her prosecution before the Privy Council, fined, *i*. 280—divorce and second marriage, 329—her trial, 331.
- Siderfin's Reports—a reporter of cases decided during the Commonwealth, *ii*. 75, 78, 147, 161, 165—disregarded by Lord Mansfield, *iii*. 304.
- Sidmouth, Lord, circular letter by, respecting seditious publications, *iv*. 273.
- Sindercombe's trial, for conspiring to assassinate Cromwell, *ii*. 72.
- Sittings of Law Courts, formerly held in the evenings, *iii*. 110, 327.
- Slaves, entitled to freedom on arriving in England, a decision by Lord Mansfield, *iii*. 291.
- Smith, James, author of 'The Rejected Addresses,' description by, of Lord Kenyon's costume, *iv*. 146.
- Smith, Baron of Exchequer, decision by, on the Aylesbury case, *ii*. 431.
- Smith, Mr., confidential clerk to Lord Ellenborough, letters to, *iv*. 286, 287.
- Smith, Sydney, remarks by, on the Corn Laws, *iv*. 132.
- Smollett, Dr., character by, of Lord Mansfield, *iv*. 34.
- Smythe, Sir S. S., a Commissioner of the Great Seal, *iii*. 123, 146—infirmities of, when Chief Baron, *iv*. 23.
- Solicitor, universal adoption of term in modern times, *iv*. 367.
- Solicitor-General, powers and privileges of the, *iii*. 161.
- Somers, Lord, counsel for the seven Bishops, *ii*. 302—removed from the office of Chancellor by the King, 426—enters Parliament late in life, *iv*. 14—disgust of, at the duties of an attorney, *iv*. 42.—*Sce* 'Lives of the Chancellors,' *iv*. 62.
- Somerset's case, judgment of Lord Mansfield in, *iii*. 292.
- Somerset, Earl and Countess of, proceedings against for the murder of Sir Thomas Overbury, *i*. 329, 337, 413.
- Special cases of facts for the consideration of the Judges, excellent regulations respecting, introduced by Lord Mansfield, *iii*. 272.
- Spain, Queen of, censure on the circumstances connected with the marriage, *i*. 364.
- Speakers of the House of Commons, afterwards Judges: Dyer, *i*. 213—Wray, 236—Popham, 261—Croke, 275—Coke, 292—Finch, 387—Ley, 429—Crewe, 437—Richardson, *ii*. 9.
- Speed, remark by, on the oppression of the English by Jews and Judges, *i*. 92, *n*.
- Spelman's Glossary, extracts from, *i*. 2, 34, 40, 53, 63, 66, 68, 404.

- Squires v. Whisken, decision in, respecting the illegality of cock-fighting, iv. 226.
- St. Asaph, Dean of, celebrated trial of, iii. 429; iv. 67—eloquent speech of Erskine on, 16.
- St. John, Oliver, speech of, against the Judges, i. 92, n.—Chief Justice of Upper Bench, an able lawyer, ii. 80—paternity and education, 81—a keen republican, 83, 90—prosecuted in the Star Chamber, 83, 86—proceedings abandoned, 87—counsel for Hampden, 87—his conduct in the Long Parliament, 87—made Solicitor-General, 93—his atrocious proceedings in the prosecution of Lord Strafford, 94—his bill against the Church, 97—for transferring the military power to the Parliament, 98—his plan for quieting all scruples respecting the oath of allegiance, 99—his proposal for supplying Parliament with a new Great Seal, 101—superseded in office, becomes a Lord Commissioner under the Parliament, *ib.*—Commissioner at the treaty of Uxbridge, 102—Chief Justice of Common Pleas, 106—conduct after the execution of Charles I., 107—conference with Fairfax, 108—Ambassador to Holland and insulted at the Hague, 109—establishes the Navigation laws, 111—accepts a Peerage from Cromwell, charges of corruption against, 113—his danger at the Restoration, 115—his exile, return, death, *ib.*—parallel between, and Cromwell, 117.
- St. Leonards, Lord, admirable works by, on Vendors and Purchasers, and on Powers, iv. 338, n.
- Stanhope, Lord, speech of, to banter Lord Kenyon, respecting the law of libel, iv. 87—altercation between, and Lord Ellenborough, 258.
- State Trials.—See 'Trials.'
- Stanton, H. de, Justice of Common Pleas, Chancellor of Exchequer and Chief Justice of King's Bench, i. 102—Chief Justice of Common Pleas, Chief Baron of Exchequer, 103—balled on, 104.
- Stayly, the Roman Catholic banker, judicially murdered for supposed participation in the Popish Plot, ii. 256.
- Steele, Sir Richard, character of Lord Holt by, iii. 7.
- Stephen, King, intrigues and struggles of, to secure the throne of England, i. 19.
- Stockdale v. Hansard, alteration of practice since the decision in the case of, ii. 436; iv. 96.
- Stockdale v. Onwhyn, doctrine established by, iv. 366.
- Stoke-Pogis, one of the places of confinement for Charles I., i. 407, n.
- Stone, William, trial of, for treason, iv. 101.
- Stone, Mr., tutor to George III., inquiry respecting his connection with the Jacobite faction, iii. 238–241.
- Storey, Professor, eulogy on Lord Mansfield by, iv. 38—censures by, on decision in *Doe dem. Barthwistle v. Vardill*, 374, n.
- Stowell, Lord, approbation by, of the vindication of our naval rights by Lord Mansfield, iii. 245—recollections of Dr. Johnson by, iv. 26.
- Stormont, David, First Viscount, biography of, iii. 160—his fine monument, 162, n.
- Strafford's, Earl of, letters and despatches, i. 356, 391—atrocious proceedings against, ii. 94—execution, 97.
- Stratton and others, trial of, for deposing Lord Pigot, iv. 54.
- Strange, Sir John, Master of the Rolls, death of, iii. 250.
- Straw, Jack, devastation of property occasioned by, i. 112.
- Streather's case of Parliamentary privilege, ii. 55.
- Street, Sir Thomas, Justice of Common Pleas, a most servile Judge, his collusive dissent on the King's dispensing power, ii. 347, 394.
- Strickland, Miss Agnes, Lives of Queens of England, by, i. 27.
- Stringer, Sir Thomas, a Justice of the King's Bench, vice Holloway, dismissed in 1688, ii. 381.
- Stroud, prosecuted for supporting Petition of Right, ii. 38.
- Students at Law, anxiety for the proficiency of, evinced by Lord Mansfield, iii. 188—by Lord Kenyon, iv. 138—costume and habits of, *ib.* 241.
- Styles, a law reporter during the Commonwealth, ii. 71.
- Suffolk, Earl of, Lord Treasurer, passes sentence of suspension on Lord Coke, i. 338—prosecuted with his Countess in the Star Chamber, and heavily fined, 358.
- Sunderland, Earl of, evidence by, on the trial of the Bishops, ii. 306.
- Surnames of English families, origin of, i. 283.
- Swendsen, Haagen, his conviction and execution for forcibly marrying an heiress, iii. 10.
- Swinton, Lord, pamphlet by, urging the introduction of jury trial in Scotland, iv. 3.

T.

- TALFOURD, Sir T. N., Justice of the Common Pleas, narration by, of a dialogue

- between Lord Ellenborough and Henry Hunt, iv. 301—sketch of Lord Tenterden by, 408.
- Talbot, Lord Chancellor, sudden death of, iii. 120.—See 'Lives of the Chancellors, iv. 648.
- "Talents, All the," Ministry of, entry to office by, in 1806, iv. 246, 302—dismissed, 256.
- Tarleton's Jest, extracts from, respecting the imprisonment of Henry V., i. 152.
- Tate, an obscure Serjeant, made Recorder of London on the removal of Lord Holt, ii. 395.
- Tatler, ii. 403—characters admirably described in, iii. 8.
- Taylor, M. Angelo, remark on his diminutive stature, by Lord Ellenborough, iv. 302.
- Taxes, refusal to pay illegal, iii. 356, n.
- Tax on Receipts, debate on, iii. 424.
- Tea, tax imposed on, iii. 395.
- Temple, Inner, bad quality of the dinners in hall of, complained of by the students in 1573, i. 287.
- Temple, Middle, feasts at, i. 229—moots and readings at, 410—procession from, to Westminster on installation of a Chief Justice, 315, 416.
- Temple, Sir William, new scheme of administration by, ii. 259.
- Term-time, rules for the practice of the bar during, established by Lord Mansfield, iii. 370.
- Tenterden, Lord, parentage, iv. 310—education at Canterbury and Oxford, 312—intimacy with Sir Egerton Brydges and Lord Thurlow, 312—question as to his profession, 314—enters the University of Oxford, 316—obtains a scholarship at Corpus College, 317—under tuition of Bishop Burgess, 319—prize poem gained by, 320—prize essay carried off, 325—appointed College tutor, 328—becomes tutor to the son of, Mr. Justice Buller, 329—advised by that eminent Judge to select the bar for his profession, 330—conference with Lord Colchester on the subject, 332—enters at the Middle Temple, 332—a special pleader under the bar, 334—success of, on the Oxford Circuit, 335—accident when travelling near Monmouth, 336—treatise on Merchant Ships and Shipping, published by, in 1802, 337—increasing business at Guildhall, 338—large income, incompetency as an advocate, 339—chief effort at oratory, 341—social conduct on circuit, 342—marriage, 342—desire to be a Judge and disappointment, 346—appointed a Judge in the Common Pleas, 348—transferred to the King's Bench, 350—literary attainments of, kindness to Lord Campbell, 352—becomes Chief Justice of England, 354—extraordinary excellence of the King's Bench as a court of justice while he presided over it, 355—great merit as a Judge, 357—subjection to Sir James Scarlett, 359—discretion of, in avoiding disputes about jurisdiction, 362—judicial decision that the public have no common law right to the use of the seashore for bathing, 363—that no action lies for pirating an obscene book, 366—defence by, of the English doctrine of high treason, 366—decision by, that it is libellous to say falsely that the Sovereign or any other person is afflicted with insanity, 367—conduct as Judge on the trial of the Cato Street conspirators, 370—improperly forbids the publication of trials for treason until they are concluded, 372—dislike of, to technical niceties, 373—propensity of, to suspect fraud, 374—doctrine laid down by, about "care and caution" in taking negotiable securities overruled, 375—raised to the peerage by Mr. Canning, 378—ceremony of his taking his seat in the House of Lords, 381—maiden speech by, 382—opposition of, to the repeal of Corporation and Test Acts, 383—to Catholic Emancipation, 386—to the Anatomy Bill, 389—to the Bill for taking away capital punishment for forgery, 390—efforts of, for amending the law, 390—measure proposed by, respecting prescription and tithes, 391—sound views of, respecting parliamentary privilege, 394—speech against the Reform Bill, 394—last speech of, in the House of Lords, vowing never again to enter the House if the Reform Bill passed, 396—declining state of his health, 398—last circuit travelled by, 399—last appearance in court, 400—death and funeral of, 401—character and manners of, 402—compliment to, from Sir Peter Laurie, 404—encomiums of, by Macready, 404; anecdotes of, in the Quarterly Review, 405—by Townshend, Lord Brougham, 406—by Mr. Justice Talfourd, 408—love for classical literature and talent for making Latin verses, 408—specimens of Latin poems by, 411—botany taken up by, late in life as a scientific pursuit, 411—ample fortune of, and descendants, 414.
- Thame, birth-place of Chief Justice Holt, ii. 384.
- Theatricals, rage for, created by Garrick, iii. 109, 111.
- Thernynge, Sir W., Chief Justice of Common Pleas, decisions of, i. 134—his part in the deposition of Richard justified,

- 134—his conduct on the occasion, 135, 141—Chief Justice of King's Bench, 141; his death, 142.
- Therwit, Sir Robert, a Judge of the King's Bench, complaint of Lord Roos against, i. 159.
- Thorney Island, monastery founded on, i. 17.
- Thornton, Richard, trial of, for murder, iv. 232.
- Thoroton, History of Nottinghamshire by, i. 104.
- Thorpe, Sir William de, Chief Justice, i. 105—his professional progress, addresses to Parliament, 106—convicted of bribery, 107.
- Throckmorton, Sir N., trial of, before Chief Justice Bromley, i. 170—before Chief Justice Dyer, 214.
- Thurlow, Lord, Lord Chancellor, illness of, iii. 404—leader of the opposition in 1783, 425—speech by, against the Chatham Annuity Bill, 393—re-appointed Chancellor, 427—personal appearance of, iv. 14—imitations of, by Lord Holland, 37—engages Lord Kenyon as his fag, 51—appoints him Chief Justice of Chester, *ib.*—secures his return to Parliament, 53—continues Chancellor under the Rockingham administration, 59—clause for exempting his tellership rejected, 65—anecdotes relating to, 138.—See 'Lives of the Chancellors,' v. 473.
- Tillotson, Archbishop, a witness for Lord Russell, ii. 298.
- Tilney, prosecution and conviction of, for conspiracy to murder Queen Elizabeth, i. 255.
- Titteshall Church, Norfolk, the burial-place of Chief Justice Coke, i. 395.
- Tomkinson, Mr., attorney at Nantwich, Lord Kenyon articulated to, iv. 42, 48—un-generous conduct of, 44.
- Tonge, Thomas, trial of, for attempt to assassinate Charles II., ii. 141.
- Tooke, Horne, trial of, for libel, iii. 387—penury and genius of, iv. 48.
- Topping, Mr., King's counsel, anecdotes of, iv. 334, n.
- Torture, contrary to law, when introduced and by whom, i. 297, 309—opinions against, ii. 13.
- Tours, Council of, i. 42.
- Townsend's Lives of the Judges, extracts from, iv. 136, 142, 149, 211, 288, 334, 360, 393, 403, 406.
- Towton-field, battle of, i. 66.
- Townley, Colonel, trial of, for treason, iii. 97.
- Trades and professions in London, iii. 159, n.
- Treason, High, laws of, general analysis of, by Mr. Attorney General Ryder, iii. 91—exposition of, by Lord Mansfield, 420—privileges of counsel in trials for, iv. 166—the English doctrine of, explained and defended by Lord Tenterden, 366.
- Treby, Sir George, counsel for the bishops, ii. 302—Chief Justice of Common Pleas, a Lord Commissioner of the Great Seal, 426.
- Tresilian, Sir R., a Justice of Common Pleas, Chief Justice of King's Bench, i. 114—his plan for the King to triumph over the Barons, 116—for annihilating power of Parliament, 118—measures against the Barons, 119—prosecuted for treason, 120—attainted, 123—executed, 125.
- Trevor, Justice, resigns his place of Judge on the execution of Charles, ii. 107.
- Trevor, Sir Thomas, Chief Justice of the Common Pleas, decision by, in the Aylesbury Case, ii. 431.
- Trials, criminal, practice of interrogating prisoners on, iii. 9.
- Trials, State, of George, Duke of Clarence, i. 180—Stafford, Duke of Buckingham, 190—Fisher, Bishop of Rochester, 195—Sir Thomas More, 197—Anne Boleyn and her supposed gallants, 198—the Duke of Norfolk, 207, 223, 231—Sir Nicholas Throckmorton, 170, 214—Campion, the Jesuit, 240—William Parry, 242—the Earl of Arundel, 245—Tilney, 255—Secretary Davison, 257—the Earl of Essex, 260, 298—Sir Walter Raleigh, 263, 304, 419—Garnet, the Superior of the Jesuits, 266—312—the Countess of Shrewsbury, 280—Guy Fawkes, 309—Peacham, 327—Earl of Middlesex, 376—Earl of Somerset, 413—Countess of Somerset, 331, 413—Sir Giles Mompesson, 422—John Hampden, ii. 25, 94—Harrison, 26—Williams, Bishop of Lincoln, 27—Oliver St. John, 83—87—Lord Strafford, 94—Charles I., 121—the Duke of Hamilton, 125—Sir Harry Vane, 137—Thomas Tonge, 141—Col. Hacker, 149—of the London Apprentices, 152—Christopher Love, 172—Lord Craven, *ib.*—of the Regicides, 192—Andrew Bromwich, 258—Sir George Wakeman, 260—Earl of Castlemaine, 262—Fitzbarria, 286—Dr. Plunket, 287—Lord Grey de Werke, 292, 326—Colonel Walcott, 297—Lord Russell, 297, 391—the Seven Bishops, 302, 366—Pilkington, 326—Lord Delamere, 344—Lord Danby, 389—Charnock, 413—Ambrose Rookwood, 414—Christopher Layer, iii. 23, 33—Beau Fielding, 30—Major Oneby, 41—the rebels in 1745, 64—Lord Lovat, 98, 226—Elizabeth Canning, 128—Lord Balmerino, 224—Dr. De Hensey, 332—the Duchess of Kingston, 384—Horne Tooke, 387—Lord George Gordon, 419

iv. 54—Dean of St. Asaph, iii. 430; iv. 67—Stockdale, 96—John Frost, 98—Perry and Lambert, 99—William Stone, 101—John Reeve, 102—Gilbert Wakefield, 103—proprietor of the *Courier*, 105—Hadfield, 107—Benjamin Flower, 110—Warren Hastings, 165—Walker, 192—Redhead Yorke, 194—Lord Thanet and Mr. Ferguson, 196—Governor Wall, 205—Despard and others, 239—Peltier, 242—Lord Melville, 255—Leigh Hunt, 261—Lord Cochrane, 279—Dr. Watson, 281—William Hone, 285—Thistlewood, 387, 371—the Mayor of Bristol, 400.
 Trinity-Hall, Cambridge, study of the Roman Civil Law encouraged at, iii. 133, 154.
 Trown, John, executed for printing a libellous book, ii. 145.
 Trussell's continuation of Daniel, remark in, on the imprisonment of Henry V., i. 155, n.
 Trusts, courts of law incompetent to consider, iv. 95.
 Tunbridge Wells, poetry on the visit of Lord Mansfield to, iii. 437.
 Turner, Bishop, anecdotes related by, of Lord Ellenborough, iv. 286.
 Turner, Mrs., trial of, before Lord Coke, for the murder of Sir Thomas Overbury, i. 330.
 Turpine, Captain, trial and execution of, at Exeter, ii. 46.
 Twickenham, favourite residence of Pope and of Lord Mansfield, iii. 202.
 Twisden, Justice of King's Bench, a very learned Judge, ii. 155—his harsh treatment of John Bunyan, 212.
 Tyler, Rev. J. E., Life of Henry V. by, i. 148, 161.

U.

USHER, Archbishop, his plan of Church government, ii. 196, n.
 Uxbridge, memorable treaty at, between Charles I. and the Commissioners for the Parliament, ii. 102.

V.

VACATION Rambles, by Justice Talfourd, iv. 302, 406.
 Vane, Sir Harry, trial and execution of, ii. 137, 150.
 Vanloo, portrait by, of Lord Mansfield as a Westminster school-boy, iv. 38.
 Vaughan, Sir John, Chief Justice of the

Common Pleas, an early friend of Lord Hale, ii. 164—refuses to recognise the Commonwealth, 170—a consummate common-law Judge, iv. 40.
 Vaughan, Mr. Justice, ignorant of the law of real property, iv. 297—appointment as Judge, 298, n.
 Vendors and Purchasers, admirable work on, by Lord St. Leonards, iv. 338, n.
 Ventris, inaccuracies and barbarous dialect of the Reports by, ii. 301.
 Venus, the Hottentot, Case of, discussed in the King's Bench, iv. 222.
 Villeinage, Case on law of, i. 220, 221.
 Villiers, Sir John, brother of the Duke of Buckingham, betrothal of, to Lady Frances Coke by her father, i. 348—strange proceedings therefrom, 349—interference of the King on behalf of, 353—marriage of, celebrated in the presence of the King and Queen, 355—created a viscount, 356.
 Viveash v. Becker, memorable decision in, iv. 228, n.
 Voltaire, respect of Lord Mansfield for the genius of, iii. 195—the indiscriminate abuse of, in England, since the French Revolution, *ib.* n.

W.

WADDINGTON, REX, v., criminal information in, iv. 130.
 Wagers, decision of Lord Mansfield on the law respecting, iii. 293.
 Wainwright, Mr. Justice, amusing letter of, respecting Irish duels and juries, iii. 84.
 Wakefield, Gilbert, trial of, for publishing a pamphlet of a democratical tendency, iv. 103.
 Wakes, ordinance against, ii. 19.
 Walcot, Colonel, trial and conviction of, for complicity in the Rye-House plot, ii. 297.
 Waldegrave, Lord, Memoirs of, respecting Ministerial changes in 1757, iii. 326.
 Wales, Courts of Lord President of, arbitrary proceedings of, i. 321.
 Wales, Prince of, inhuman execution of at Shrewsbury by Edward I., i. 87—committal of, to prison by Sir W. Gascoigne, 149—Lord Coke released from the Tower on the intercession of, 374—(Frederick) death of, iii. 94, 231—character of, 234—Princess of (Augusta) appointed Regent 94, 236—(Caroline) delicate investigation about, iv. 267.
 Walker, Walter, the innkeeper, trial and execution of, for alleged treason, i. 173.
 Walker, Rex v., incidents on the trial of, iv. 192.

- Wall, Governor, harsh prosecution of, iv. 206—vengeful enthusiasm against, 207—execution of, 211.
- Wallace, Attorney-General to Coalition Ministry, turned out of office, iv. 59, 63—reappointed, 64, 68—dismissed, 66, 160.
- Walpole, Horace, remarks by, on the severe treatment of attorneys by Willes, Chief Justice, iii. 127—anecdotes related by, 129, 134, 364, 373—his satire on Wilmot, Chief Justice, 163—account by, of the court of the Pretender, 239, n.—remark by, on the conduct of Lord Mansfield when accused by Lord Chatham of being a Jacobite, 244—remarks by, on Lord Mansfield becoming a Cabinet Minister, 328.
- Walpole, Sir Robert, bill for imprisonment of seamen by constables abandoned by, iii. 89—speech by, against the repeal of the Septennial Act, 120—memorable interview of, with Lord Hardwicke respecting the Great Seal, 121.
- Warburton, Bishop, remarks by, on the extraordinary marks of kindness evinced by Pope for Lord Mansfield, iii. 190.
- Ward, Chief Baron of Exchequer, a Commissioner of the Great Seal in 1700, on the removal of Lord Somers, ii. 426.
- Warren, Thomas, the system of taking legal pupils introduced by, iii. 188.
- Warrenne, William de, Chief Justiciar, his descendants, i. 14—epitaph at Lewes, 15.
- Watson, Dr. James, memorable trial of, for treason, iv. 281.
- Waynflete, Lord Chancellor, a zealous Lancastrian, i. 171. *See* 'Lives of the Chancellors,' i. 360.
- Weald-Hall, near Brentwood, residence of Chief Justice Scroggs, ii. 270.
- Weary, Sir Clement, *Memoir of*, iii. 117, n.
- Wedderburn, Sir John, trial and execution of, for treason, iii. 69.
- Wedderburn, Lord Loughborough, insult by, to Benjamin Franklin, one of the causes of the American War, iii. 378—reasons for his failure as a debater in Parliament, iv. 14. *See* 'Lives of the Chancellors,' vi. 1.
- Welden, Sir A., Court and Character of James I. by, i. 331.
- Wemyss, John, treatment of Lord Mansfield by, iii. 173, *et seq.*
- Wentworth, Paul, the Puritan, his motion for a public fast, i. 252.
- Western Circuit, anecdotes of, ii. 20, 205—the Bloody Assizes on, 334, 350.
- Westminster Hall built by Rufus, i. 17—antiquity and prestige of, 18.
- Westminster, hours of attendance at the Courts of, in 16th century, i. 286.
- Wetherell, Sir Charles, eccentric exuberance of, on the trial of Dr. Watson, iv. 281.
- Weyland, Chief Justice of Common Pleas, banished for taking bribes, i. 92.
- Wharton, Sir G., *Gesta Britannicorum* by, ii. 133.
- Whetstones, the Rhyming Biographer, verses by, i. 212—remarks by, 236.
- Whiddin, Sir J., Justice of King's Bench, his remark on the imprisonment of Henry V., i. 151.
- Whigs, all politicians ranking under general denomination of, during the reign of George II., ii. 427, iii. 208, 347.
- Whitelock, description of Rolle, Ch. J., by, ii. 53—assists in preparing articles of impeachment against Lord Strafford, 93—Commissioner of Great Seal, 106—his 'Memorials,' 108, 131.
- Whitgift, Archbishop, tutor of Lord Coke, i. 285, 302—pastoral letter of, against irregular marriages, 301—institutes a suit against Lord Burleigh, Coke, and others, for promoting an irregular marriage, 302.
- Wigs of barristers introduced at the Restoration, ii. 123.
- Wilde, Serjeant, an active member of the Long Parliament, made Chief Baron by Cromwell, ii. 105.
- Wilkes, John, decision of the Judges in the case of, iii. 151.
- Willes, Edward, Bishop of Bath and Wells, his parentage, iii. 116.
- Willes, Sir Edward, appointed a Justice of the King's Bench, in January 1763, iii. 129.
- Willes, Sir John, his early career, iii. 116—Attorney-General and Chief Justice of Chester, 118—speech on the Septennial Act debate, *ib.*—is made Chief Justice of the Common Pleas, 85, 120—his political intrigues, 121—First Lord Commissioner of Great Seal, 122—loses the Chancellorship, 123—dies broken-hearted, 126—his judicial decisions, *ib.*—his descendants, 129—character of, 116, 123, 127—profligate private life of, 129—lampoon by, on Lord Mansfield, iv. 33.
- William I., invasion of England by, i. 5—Coronation of, *ib.*—death of, 9—instructions against, 9, 13.
- William Rufus, conspiracy against, i. 10—church property seized by, 16—Westminster Hall erected by, 18.
- William III., landing of, at Torbay, ii. 301—Judges appointed by, 307, 381—political factions equally balanced during the reign of, 382—threat of, to return to Holland unless the throne formally declared vacant, 399—anxiety of, for securing competent and honest Judges,

- 406—conspiracy to dethrone, 412—takes away the Great Seal forcibly from Lord Somers, 425—bill to appoint the Judges *quoadvisu ac bene gesserint* vetoed by, 426—the Great Seal kept a long time in commission by, 367.
- William the Lion, King of Scotland, invasion of England by, i. 23—taken prisoner, 24—humiliating terms imposed upon, 26, 94.
- Williams, conviction of, for publishing the Age of Reason, iv. 106.
- Williams, Bishop, Lord Keeper, i. 431, 438—attempt by, to convict Archbishop Abbot of manslaughter, i. 368—prosecution of, by Laud, ii. 27—punishment imposed on, 28. See 'Lives of the Chancellors,' ii. 441.
- Williams, Sir John, Justice of the King's Bench, admirable scholarship of, iv. 410.
- Williams, Mr. Justice V., his edition of Saunders's Reports, ii. 330, n.
- Wilmot, Sir J. Eardley, birth and education, iii. 131—his eminent schoolfellows, 132—his anxiety for seclusion, 133, 141—retires from London, 136—is made a Judge, 137—a Commissioner of the Great Seal, refuses to be Chancellor, 139 becomes Chief Justice of Common Pleas by duress, 141—again refuses the Great Seal, 145—resigns his office, 46.
- Wilson 'Life and Reign of James I.' by, i. 317, 368, 375.
- Witchcraft, statute making it felony, ii. 214—trial of persons accused of, 216—their execution, 219—trials for, abolished by statute, iii. 5, 29—statutes against, 29.
- Witenagemote, proceedings at, i. 1.
- Withpole, Sir E., aids the escape of Lady Hatton and her daughter, i. 349.
- Wolsey, Cardinal, patronizes FitzJames, Chief Justice, i. 189—banished from Court, 191—his speech to Mr. Justice Shelleys, 192—death of, at Leicester, 194.
- Women, treatment of, when convicted of larceny, i. 220, n.—rights and privileges of, iii. 62—when married, not allowed to sue as spinsters, iv. 96.
- Wood, Sir George, Baron of the Exchequer, trial and conviction before, at Lincoln Assizes, of an editor of a country newspaper for publishing a libel on the state of military discipline, iv. 265, n.
- Wood, George, the eminent special pleader, pupils of, iv. 155, 333—anecdotes respecting, 155.
- Woodfall, criminal information against, iii. 358, 360, 368.
- Worcester, battle of, ii. 109, 112—serious accident at the Assizes of, in 1750, iii. 140.
- Worship, directory of public, framed to supersede the Liturgy, ii. 66.
- Wray, Sir Christopher, Speaker of the House of Commons, i. 236—a Justice of Common Pleas, 239—Chief Justice of England, 240—conduct on several state trials, 240—his speech on trial of Secretary Davison, 244—death, character, 245.
- Wray, Sir Cecil, contest by, for Westminster, in 1784, iv. 71.
- Wreck, right to claim of, denied, iii. 291.
- Wright, Sir Martin, Justice of King's Bench, death of, in 1755, iii. 138.
- Wright, Sir Robert, his parentage, depravity, ii. 307, 352, 356—his fraud and perjury, 357—patronised by Jeffreys and made Baron of Exchequer, 360—opposition by the Lord Keeper, 359—promoted to be Judge in King's Bench, Chief Justice of Common Pleas, Chief Justice of King's Bench, 362—orders a deserter to be hanged contrary to law—a visitor at Magdalen College, Oxford, 363—a member of High Commission Court, 365—conduct on the trial of the seven Bishops, 366—375—his sarcastic remark to the Solicitor-General, 376, n.—his death and burial in Newgate, 377—his name excepted from the Indemnity Act, 378.
- Wriothely, Lord Chancellor, i. 206.—See 'Lives of the Chancellors,' i. 640.
- Writ de ventre inspiciendo, when allowed, iv. 79.
- Wynford, Lord, Chief Justice of the Common Pleas, qualifications of, as an Advocate and a Judge, iv. 355, 359—antipathy of Lord Tenterden to, 368—judgment of, in *Blundell v. Catterall* overruled, 363—in *Rex v. Harvey* and another, 369.
- Wyndham, a lawyer of reputation, consents to act as a Judge under Cromwell, ii. 76.
- Wynnstay, Ode by Lord Keayon in praise of, iv. 43.
- Wythens, Sir Francis, Justice of King's Bench, removed for his refusal to enforce martial law in time of peace, in 1687, ii. 352, 395.

Y.

- YATES, Mr. Justice, anecdotes of, iii. 142—appointed a Judge of the King's Bench, 266—opinion on the Common Law right of authors, 301—his judgment in the famous case of *Perrin v. Blake*, 308—exchanges into the Court of Common Pleas, 308, n.
- Year Books, antiquity and contents of, i. 180, 184, 213, 398.

Yelverton, Sir H., Attorney-General, prosecutes Sir E. Coke for rescuing his daughter i. 352—prosecuted in the Star-Chamber, and heavily fined, 358—convicted of corruption, 430.

York, Richard, Duke of, claim to the throne by, i. 167—death of, *ib.*

York, Grand Court of the Circuit at, iv. 161.

Yorke, Hon. Charles, sudden death of, *ib.* 145.—See 'Lives of the Chancellors,' v. 364.

Yorke, Mr. Redhead, prosecution and conviction of, iv. 194.

THE END.

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